

THE
H I S T O R Y,
OF THE
T R I A L
OF
WARREN HASTINGS
LATE GOVERNOR-GENERAL OF
BEFORE THE
High Court of Parliament in Westminster
ON AN
I M P E A C H M E N T
BY THE
COMMONS OF GREAT-BRITAIN
FOR
HIGH CRIMES AND MISDEMEANOURS.
CONTAINING THE
WHOLE of the PROCEEDINGS, and DEBATES
IN
BOTH HOUSES OF PARLIAMENT,
RELATING TO THAT CELEBRATED PROSECUTION,
FROM
FEB. 7, 1786, UNTIL HIS ACQUITTAL, APRIL 23, 1795.
TO WHICH IS ADDED, AN
ACCOUNT OF THE PROCEEDINGS
OF
VARIOUS GENERAL COURTS
OF THE
HONOURABLE UNITED EAST-INDIA COMPANY,
HELD IN CONSEQUENCE OF HIS ACQUITTAL.

L O N D O N :

PRINTED FOR J. DEBRETT, OPPOSITE BURLINGTON-HOUSE, PICCADILLY;
AND VERNOR AND HOOD, BIRCHIN-LANE, CORNHILL.

1796.

CONTENTS.

PREFACE.

MEMOIR of MR. HASTINGS.

SKETCH of the PROCEEDINGS of the HOUSE of COMMONS against him previous to his IMPEACHMENT and TRIAL.

PLAN of the HIGH COURT of PARLIAMENT erected in Westminster Hall.

THE PROCEEDINGS in the TRIAL divide themselves into EIGHT PARTS, according to the different SESSIONS of the different PARLIAMENTS during which they were carried on.

P A R T I.

CONTAINS

Proceedings from FEBRUARY 13, 1788, when THE COURT was opened, to JUNE 14, when it was adjourned: including the EVIDENCE on the FIRST and SECOND CHARGES, and the SPEECHES of Messrs. BURKE, FOX, GREY, ANSTRUTHER, ADAM, PELHAM, and SHERIDAN, on Summing up the Evidence on the above Charges.

P A R T II.

PROCEEDINGS from APRIL 21 to JULY 8, 1789; including, EVIDENCE on the FIRST PART of the SEVENTH CHARGE, respecting BRIBES or PRESENTS.

The SPEECHES of Messrs. BURKE, FOX, SHERIDAN, GREY, ANSTRUTHER, and ADAM, on that Subject.

MR. HASTINGS' PETITION to the HOUSE of COMMONS complaining of Mr. BURKE's Mode of conducting the Prosecution; together with their DEBATES thereon.

MR. BURKE's JUSTIFICATORY EPISTLE to Mr. MONTAGUE; with Major SCOTT's Letters in Answer; and MR. HASTINGS's ADDRESS to the COURT previous to its Adjournment on July 8, 1789.

C O N T E N T S.

Replies to the Evidence and Arguments of the Counsel for Mr. HASTINGS by Mr. GREY, Mr. SHERIDAN, Mr. FOX, Mr. TAYLOR, and Mr. BURKE.

Curious Collection of Mr. BURKE's Abuse of Mr. HASTINGS.

Debate in the HOUSE OF COMMONS on a Motion for excluding Mr. BURKE from the Vote of Thanks to the MANAGERS of the IMPEACHMENT.

SUPPLEMENT ; containing the Report from the COMMITTEE of the HOUSE OF COMMONS appointed to inspect the LORDS' Journals in Relation to their Proceedings on the Trial of Mr. HASTINGS, and the Circumstances that had contributed to the Duration of the Trial.

P A R T VIII.

PROCEEDINGS from JANUARY 6 to APRIL 23, 1795.

Mode of Proceeding in giving Judgment on the CHARGES against Mr. HASTINGS.

ABSTRACT of the REPORT of a COMMITTEE of the LORDS on that Subject.

DEBATES and JUDGMENT of the LORDS on the different CHARGES.

A LIST of the PEERS who voted on the different ARTICLES of IMPEACHMENT ; and how.

Another LIST (on the Close of the TRIAL) of the CHANGES in the HOUSE of PEERS, the HIGH COURT of JUSTICE in BRITAIN, pending the Trial of Mr. HASTINGS.

ACCOUNT of the PROCEEDINGS of various GENERAL COURTS of the HONOURABLE UNITED EAST-INDIA COMPANY, held from MAY 29, 1795, to MARCH 2, 1796, when the CHAIRMAN of the COURT of DIRECTORS announced the Confirmation of the HONOURABLE COMMISSIONERS of the BOARD of CONTROUL for INDIA AFFAIRS of the RESOLUTION of the COURT for GRANTING an ANNUITY to Mr. HASTINGS of 4000*l.* for TWENTY-EIGHT YEARS and a HALF from JUNE 24, 1785, in COMPENSATION for his LONG FAITHFUL, and IMPORTANT SERVICES ; as also their Concurrence in the Resolution for allowing him an INDEMNIFICATION for the LEGAL EXPENCES of his TRIAL.

OPINIONS of COUNSEL, taken as well by the COURT of DIRECTORS as by HIS MAJESTY'S MINISTERS, on the Competency of the COURT to make such proposed INDEMNITY.

LETTERS that passed between Sir STEPHEN LUSHINGTON, CHAIRMAN of the COURT of DIRECTORS, and Mr. HASTINGS, on the Subject, and including a STATEMENT of Mr. HASTINGS' PROPERTY by HIMSELF.

ADDRESSES from the INHABITANTS of CALCUTTA, SEPTEMBER 19, 1795, to Mr. HASTINGS, on his ACQUITTAL.

PREFACE

P R E F A C E.

FROM the moment that an Impeachment of Mr. HASTINGS was agreed on by the House of Commons, the EDITOR of the present COMPILATION determined to mark the progress, and to collect, and to preserve every document and memorial, in any material degree connected with a TRIAL so new in its nature, so various and extensive in its relations, and that might probably, in its issue, produce the most important, though unknown consequences. If, however, he had foreseen, or could have suspected that it would have been protracted to so unusual a length, and involved such a complication of attentions, he would, probably, have been deterred from so arduous an undertaking. New doubts and difficulties of Law and Evidence arose from time to time : new scenes were opened ; new characters introduced. Fact was alledged on fact ; and of debate and declamation there seemed to be no end. The task, in a word, grew under his hands : but he felt himself committed, and could not retreat. The industry with which he has executed this plan will be readily acknowledged. To some, perhaps, it may appear to have been carried to excess. But, of most of the Papers he has preserved, a little reflection will discover some purpose either of utility or entertainment ; and future conjunctures will, no doubt, as usual, by opening a wider sphere of relation, constitute and disclose new ways in which these fugitive pieces may contribute to the instruction of the Civilian and the Historian, and the amusement of the future Antiquarian. To the Lawyer it is a Record of Judicial Precedents, Reports, and Decisions. To the Historian it presents, collaterally, a wider field of political intrigue and military operation than had entered at any former period into the British History ; and

P R E F A C E.

and to future Antiquaries many interesting Anecdotes relating to persons who not only make a figure in the present shifting scene, but whose names may penetrate into times to come. But it is not to future Antiquaries only that the Pieces here collected, not necessarily though naturally connected with the Trial, will appear interesting—the greater part of them, we doubt not, will please general Readers of the present times.

This TRIAL derives still higher consequence from its connection and influence on our political system. It has served, in its commencement, progress, and termination, to define the political situation of this Country with respect to India; to give greater precision to her maxims both of policy and jurisprudence in that country; to ascertain the line of conduct that may be pursued, on various emergencies, by the Civil and Military Officers of the Company and the Crown; and on the whole, in various ways to consolidate the British Empire in Hindostan.

Thus far it is particularly interesting to every subject of Britain; but especially to all who have any share in the British Government. But it is not either as a gratification of Curiosity, a directory to Lawyers, a source of information to Historians, and of instruction to Politicians and the Executive Government in all its branches, that this TRIAL is chiefly interesting—it possesses an interest of a kind still more noble and affecting. In a moral view, it is interesting to all men, and all ages, to whom a good man struggling with adversity can never be an object of indifference—a good man, after saving his Country* by the brightest exertions of genius as well as public virtue, attacked by unprecedented persecution and hardships.

* For an account of the manner in which the exertions of Mr. HASTINGS saved his Country, by enabling the English Minister, as he acknowledged to make the Peace of 1783; and also of the intrigues and cabals that gave birth to the Impeachment of Mr. HASTINGS, see *Memoirs of the late War in Asia*, under the head of 1782..

P R E F A C E.

Mr. HASTINGS is a man of gentle manners, and of an elegant mind. From his earliest years he has been devoted to study, and to the service of his Country. In private life he has uniformly displayed universal benevolence to all around him, as well as most exemplary moderation in the government of his own passions—in the public characters in which he was successively employed, the most impartial justice. His mind, active and comprehensive at all times, rose with an elastic force under every pressure; and, consequently, his talents and virtues shone forth with the greatest splendor in times of difficulty and danger. In 1778, at a crisis pregnant with danger and full of alarm, he pursued those measures which the impending calamities required. In another hemisphere, and among Nations governed by other Religions, Customs, and Laws, he maintained the British dominion in India, by means exactly of the same kind with those that acquired them, and by which alone it was possible to maintain them. It has been justly observed, on the subject of Legislation, that what is metaphysically true may be in that very proportion politically false; and that in all cases, respect should be had to times and circumstances. It could scarcely be expected that Mr. HASTINGS, in circumstances that admit of great latitude of conduct in Europe, should attempt to weather the storm in India by an European Compass. Without violating the usages and laws of Asia, he combined and directed a large military force for the preservation of our Asiatic settlements.

The Confederacy of Europe with America, the irruption of Hyder into the Carnatic, the flight of Sir Thomas Rumbold from Madras, the supineness and imbecility of his successors in that Presidency, the defeat of the British Army under Sir Hector Munro, the excision of Colonel Baillie's detachment: all these circumstances of improvidence, disgrace and disaster, struck a temporary panic, and, for a time, unnerved the heart, and unstrung the arm. He who

P R E F A C E.

and imploring eye was now turned, did not disappoint the fond hopes and expectations of his Countrymen. From the centre of Calcutta an energy was diffused throughout the whole of the British settlements in Hindostan. The Governor-General displayed a dignity and elevation of mind that seemed to carry him wholly out of himself, as well as to sink every private interest and concern in the grand pursuits of public spirit; and, notwithstanding the very powerful opposition he had to encounter, he conducted the War at last to a prosperous and glorious issue.

Such is Mr. HASTINGS; whom neither innocence, nor virtue, nor talents, nor complete and brilliant success in the most arduous as well as important enterprize, was able to save from a Prosecution not more surprizing in its origin than wonderful in its conduct; which, when we reflect on the spirit that dictated, perplexed, and protracted it, may be called, in the emphatic language of the Sacred Scripture, a FILRY TRIAL; and of which it may be remarked, that never was Trial so long protracted, or so completely triumphant over such a combination of learning, ability, and political power.

The public mind, by the obtrusion of never-ceasing assertion, aided by all the powers of oratory, was stunned into an apprehension that the late Governor-General might not be found so free as was generally wished from all ground and shadow of reproach. Year passed on after year, and a degree of suspicion was followed by a greater degree of indifference to the matter at issue.

At last men began to wonder, that where accusation was so loud, proof should be so feeble: and public opinion, that had been the slowest to give any degree of credit to his accusers, formed the first and most certain presage of his acquittal.

Every thing in human affairs is mixed. Good is blended, and depends in some measure for its very essence on evil. The ways of Providence, though mysterious, are just.

MEMOIR OF MR. HASTINGS.

The cause of temporary affliction has consigned the name of HASTINGS to immortal honour, by incorporating his life and actions with the juridical as well as the political and military History of his Country. The Charges brought against Mr. HASTINGS are not now to be considered as misfortunes, but as difficulties that have proved and ennobled his virtues.

WE have here subjoined a

MEMOIR OF MR. HASTINGS,

from the time of his first entrance into public life, in the Civil Service of the Hon. East India Company, to the time of his voluntary return to confront his Accusers, and take his Trial, in 1785: and thus, having connected his Conduct preceding with his Behaviour during the Prosecution against him, we present to our Readers, among other particulars, a GENERAL REVIEW of the LIFE and ACTIONS of WARREN HASTINGS, Esq.

WARREN HASTINGS, Esq. is descended from a very ancient and respectable family at Daylesford, in the county of Worcester, where his ancestors for many years possessed an estate*. He was born in the year 1733, and received his education at Westminster School. At this seminary he very early exhibited marks of a more than common genius, and attracted the notice of Dr. Nichols, the Master, in a particular manner. His acquisitions in literature did credit as well to the preceptor as the pupil, and when he left Westminster, he was esteemed one of the best scholars of that period.

In 1750 he was appointed a Writer in the service of the East India Company, at Bengal; and soon after his arrival, applied himself with great assiduity and attention to acquire the Persian and Hindoostan Languages, in which he succeeded to so great a degree, that he was selected as the properest person to attempt the establishing of a Factory in the interior parts of Bengal, where no European had hitherto appeared; and though the scheme proved unsuccessful, he conciliated the esteem of the natives in such a manner, that when he was taken prisoner by the troops of Surajah Dowla they shewed their respect to him by treating him with singular marks of humanity and attention.

In a short time the fortune of war changed, and Surajah Dowla, who had aimed at the destruction of the English in that part of the

* For a particular account of Mr. Hastings's Family, extracted from NASH's "History of Worcestershire," and the Records in the Herald's Office, the reader is referred to Part VIII. p. 140, 141.

globe, exhibited a most striking instance of the uncertainty of human affairs. From a state of the highest prosperity he sunk to the most abject point of misery;—he was defeated, dethroned, and in the end murdered by his successor, Meer Jaffer, in whose Court it became necessary to have a resident Minister. On this occasion Colonel, afterwards Lord Clive shewed that discernment of men which marked his character, by selecting Mr. Hastings for this important office. He departed himself in it to the general satisfaction, until he became a Member of the Administration in Bengal.

In 1765 Mr. Hastings returned to England with his friend Mr. Vansittart, and with a fortune extremely moderate. In 1769 he obtained the appointment of second in Council at Madras, where he remained until February 1772, when he returned to Bengal, the Directors having named him Governor of that Settlement.

The distresses of the East India Company at that period, arising from every species of mismanagement both at home and abroad, are too well known to require our dwelling upon them. It is sufficient to observe, that when Government seized the opportunity of intermeddling in their affairs, but one voice was heard respecting the person in whom the supreme authority over India should be invested, and this was Governor Hastings.

In less than two years the credit of the Company wore an entire new face, confidence was returning into its proper channel, and the expectation of the Public was not disappointed in the measures pursued abroad. Unfortunately for the interests of the British Nation in India, the Gentlemen who were joined with Mr. Hastings in the Administration, Mr. Barwell excepted, carried with them violent prejudices from England, and commenced an opposition to his plans and measures the moment of their arrival in Calcutta, which continued with unremitting violence until the death of Colonel Monson. This event being succeeded soon after by that of General Clavering, made a very material alteration in the conduct of the leading men of this Country towards him, and he had the honour of being three times appointed by the Legislature to the supreme Government of Bengal.

Perhaps the conduct of no man in public life has ever been more strictly scrutinized, more rigidly enquired into, or more freely commented upon; and it may be added, no character is come out more bright after the inquisition upon it. If he has been powerfully attacked, he has been as ably defended; and the warmth of his friends, and the candour of the Public, have at least kept pace with the malice of his enemies. Twice did the majority of the Directors determine to remove him, and twice did the great body of his Constituents preserve him in his station. In 1776 the weight of Government was exerted against him, and the influence of his Majesty's Ministers personally exercised at the India House to remove him; but a majority of Proprietors defeated the attempt, and fixed him in Bengal. On May 28, 1782, the House of Commons voted, that it was the duty of the Court of Directors to displace Mr. Hastings from his Government. This happened during what is called the Rockingham Administration: but it is remarkable, that Mr. Fox, the Lord Advocate (now Mr. Sec. Dundas), and the other Gentlemen, who spoke

ledged, that his abilities were of the most splendid kind, and his integrity unquestionable.—In consequence of this vote the Court of Directors again took into their consideration the state of their affairs, and on the 22d of October determined, "by a majority of 13 to 10, that Mr. Hastings should be recalled." The propriety of this measure was most ably and fully discussed by the Proprietors on the 24th and 31st of the same month, when it was determined by ballot that Mr. Hastings should remain in his station: the numbers for his continuance being 428 against 75. In consequence of this Resolution, the next day the vote of recal was rescinded by the Court of Directors.

In the month of June 1785 Mr. Hastings returned from India to England, and in the year following was impeached of High Crimes and Misdemeanors.

Except a small interval, Mr. Hastings was thirty-two years in the service of the East India Company, eleven of which he was Governor of Bengal. To him the East India Company were indebted for the communication which was established between this country and India by way of Suez. The trade from Bengal to the Red Sea promised to be highly advantageous, and could never have affected the Company's sales in England. A contrary opinion however prevailed, and English vessels are no longer permitted to navigate to Suez. The communication was open long enough to convey the Company's orders for the attack of Pondicherry; an event deemed at that time, and it certainly was so, of the greatest national importance.

Among other objects which distinguished the Governorship of Mr. Hastings, was his deputing the ingenious Mr. George Bogle to the Court of the Grand Lama in Thibet, who received him with the utmost kindness and hospitality; and a variety of curious information was procured respecting the Country of Thibet, an account of which was published in the "Philosophical Transactions" by the late John Stuart, Esq. F. R. S. Member of the Supreme Council at Bengal.

Mr. Hastings is an admirer and an encourager of the fine arts; he excels as an engineer and an architect, and possesses no indifferent taste for poetry, as may be seen by the following imitation of the sixteenth Ode of the second book of Horace, written on board the Barrington, in his voyage to England in 1785, and addressed to John Shore, Esq.

Otium Divos, &c.

For ease the harrassed seaman prays,
When equinoctial tempests raise
The Vape's & surrounding wave;
When hanging o'er the reef he hears
The cracking mast, and seen or fear,
Beneath his wat'ry grave.
For ease the slow Mahatta spoils,
And harder Self-agric' toils,
While both their ease forego;
For ease, which neither gold can buy,
Nor robes, nor gems, which oft beguile
The cover'd heart, bestow.

MEMOIR OF MR. HASTINGS.

For neither gold nor gems combin'd
 Can heal the soul or suffering mind.
 No! where their owner lies:
 Perch'd on his couch Distemper breathes,
 And Care, like smoke, in turbid wreaths,
 Round the gay ceiling flies.
 He who enjoys, nor covets more,
 The lands his father held before,
 Is of true bliss possess'd,
 Let but his mind unfetter'd tread
 Far as the paths of knowledge lead,
 And wise, as well as blest.
 No fears his peace of mind annoy,
 Left printed lies his fame destroy,
 Which labor'd years have won;
 Nor pack'd Committees break his rest,
 Nor avarice sends him forth in quest
 Of climes beneath the Sun.
 Short is our span; then why engage
 In schemes for which man's transient age
 Was ne'er by fate design'd?
 Why slight the gifts of Nature's hand?
 What wanderer from his native land
 E'er left himself behind?
 The restless thought and wayward will,
 And discontent, attend him still,
 Nor quit him while he lives;
 At sea, Care follows in the wind;
 At land, it mounts the pad behind,
 Or with the post-boy drives.
 He who would happy live to-day,
 Must laugh the present ills away,
 Nor think of woes to come;
 For come they will or soon or late,
 Since mix'd at best is man's estate,
 By Heav'n's eternal doom.
 To ripen'd age CLIVE liv'd renown'd,
 With LACKS enrich'd, with honours crown'd,
 His valour's well-earn'd meed.
 'Too long, alas! he liv'd to hate
 His envied lot, and died too late,
 From life's oppression freed.
 An early death was ELLIOTT's * doom;
 I saw his opening virtues bloom,
 And manly sense unfold,
 Too soon to fade. I had the stone
 To record his name, 'midst Hordes unknown,
 Unknowing what it told.

* Mr. Elliott (the brother of Sir Gilbert Elliott) died in October 1778, in his way to Nanpore, the Capital of Moodjee Boosla's dominions, being deputed on an embassy to that Prince by the Governor General and Council. A monument was erected to his memory on the spot where he was buried; and the Mahrattas have since built a town there, which is called Elliott's Gunge, or Elliott's Town.

MEMOIR OF MR. HASTINGS.

To thee, perhaps, the Fates may give,
I wish they may, in health to live,
Herds, flocks, and fruitful fields;
Thy vacant hours in mirth to shine;
With these the Muse, already thine,
Her present bounties yields.
For me, O SHORE, I only claim,
To merit, not to seek for, fame,
The good and just to please;
A state above the fear of want,
Domestic love, Heaven's choicest grant,
Health, leisure, peace, and ease.

Mr. Hastings, even amidst the bustle of political life, manifested always a strong propensity to literary pursuits; and among the number of his correspondents we find the late celebrated Dr. Johnson. Three letters to him from the Doctor have been preserved by Mr. Boswell; who, speaking of the condescension with which Mr. Hastings communicated to him these letters, delineates the following short sketch of his character: "Warren Hastings, a man whose regard reflects dignity even upon Johnson; a man, the extent of whose abilities was equal to that of his power; and who, by those who are fortunate enough to know him in private life, is admired for his literature and taste, and beloved for the candour, moderation, and mildness, of his character. Were I capable of paying a suitable tribute of admiration to him, I should certainly not withhold it at a moment* when it is not possible that I should be suspected of being an interested flatterer. But how weak would be my voice, after that of millions whom he governed!"

* January 1791.

S K E T C H

O F T H E

P R O C E E D I N G S

O F T H E

H O U S E O F C O M M O N S

AGAINST MR. HASTINGS PREVIOUS TO HIS IMPEACHMENT
AND TRIAL.

THE East India Company is, doubtless, at this moment*, the first commercial object in England: its amazing territorial acquisitions, that are computed to be little short of 300,000 square miles, and to contain thirty millions of peo-

* This SKETCH was originally written in the year 1788.

ple, must be necessarily attended with a proportionable increase of trade—which at times, joined to the dissensions amongst, and misconduct of its managers, both at home and abroad, have greatly engaged the attention of the legislature. The power of the crown has been gradually extended over these distant territories—and it even assumed the right of nominating governors and council, and of appointing judges:—an act very extraordinary, it was thought, in its kind, and by which it acquired an immense share of power and influence.

But no proportional benefit has hitherto resulted to the Company: on the contrary, the new established Court of Justice has paid so little attention to the manners of the inhabitants of India, and to the usages of that country, as to occasion the most alarming discontents among the natives, and great dissatisfaction among the Company's own servants.

It was in fact the interest of the East India Company, that their governments in India should interfere as little as possible in the domestic or national quarrels of the Country Powers, and that they should always endeavour to be in a state of peace and tranquility with their neighbours. But these maxims of sound policy they have not adhered to; the governors and servants of the East India Company have unnecessarily, and sometimes very iniquitously, embroiled themselves with the Country Powers, and engaged in wars of a very pernicious and indefensible nature. The wars into which they lately entered with the Mahrattas, and that enterprising prince Hyder Ally, have been attended with an enormous expence, and have been extremely prejudicial to the interests of the Company. By temporary plans of violence and injustice, and sometimes disregarding their own treaties, they have forfeited the good opinion of the natives; and by exciting the indignation of the Country Princes against them, greatly lessened the security of the possessions of the Company.

From the danger that threatened the very existence of our empire in that part of the globe, some time previous to the conclusion of the late war, and the fatal stroke our national credit might receive from the dissolution of the Company, whose affairs were universally looked upon to be in a most precarious state, the necessity of applying speedy and effectual remedies was fully acknowledged; and the oppressed natives of India had at length a prospect of relief.

During a rapid succession of Ministers, every party had in turn pledged themselves to exert both their own, and the whole force and power of government for this important end. Early in 1781, two Indian Committees were appointed, to enquire into the mal-administration of the Company's affairs, both at home and abroad:—the one a select, the other a secret committee:—the former composed of the most distinguished members in opposition—the latter, under the management of the Minister's confidential friends: and both these committees continued to sit till the prorogation of Parliament, in November 1781.

On the 9th of April 1782, Mr. Henry Dundas, the chairman of the secret committee, moved, that the reports of that committee should be referred to a committee of the whole House. On this occasion, in a speech of near three hours, he entered very fully into the causes and progress of the calamities of the East. Among the former, he insisted principally on the impropriety of the Company's presidencies, in undertaking all their military operations with a view to conquest only—their breaches of and disregard to treaties—their speculation and scandalous oppression of the natives—and the criminal relaxation that prevailed among the Directors at home, who were ever ready to connive at the grossest misconduct, whenever it was attended with the least temporary gain to the Company.

In tracing the operation of these causes, he enumerated a few of the most flagrant acts of injustice, treachery and violence, by which not only the Company's affairs had been brought to the verge of ruin, but indelible disgrace entailed on the British name and government in India:—all of which will be more particularly stated in the course of this Sketch.

Some days afterwards Mr. Dundas brought forward two sets of propositions: The first, amounting to 45 in number, related to the general system of the Company's government, and the misconduct of the presidency of Bombay;—the second set, comprising 24, had for their object the conduct of the Presidency of Madras:—on these, if adopted by the House, it would be necessary to ground a criminal

criminal prosecution against Sir Thomas Rumbold, and others concerned therein. The articles were agreed to, and in consequence he moved the House to proceed by a bill of pains and penalties, against Sir Thomas, and others, for breaches of public trust and high crimes and misdemeanors.

Before the second reading of the bill of pains and penalties, it was ordered, that Sir Thomas Rumbold should be heard in his defence, against the same, by counsel, at the bar. The great variety and complicated nature of the criminal allegations on which the bill was founded, made it necessary for the accused party to enter into a long minute defence. Little progress was made therein during the short period that remained of the sessions of 1782; and the unsettled state of public affairs at the beginning of the year 1783, prevented the House from taking it up till near the middle of that session. As the season advanced, members became daily more remiss in their attendance; and at length, on the 1st of July, a motion was made and carried, for adjourning the further consideration of the bill to the 1st of October, by which means the whole proceeding fell to the ground, and was never afterwards resumed.

That a bill, the result of such long and laborious enquiries, a bill introduced, received, and proceeded upon by the House with so much solemnity, should be suffered thus to fall to the ground, is a circumstance on which we are at a loss to comment. What impression Sir Thomas Rumbold's defence made upon the House, as no question was put thereon, we cannot possibly determine. It would certainly be harsh and inequitable to presume the party accused was guilty, because he accepted of indemnity without acquittal; and on the other hand, we cannot pronounce him innocent, because, under the circumstances related, his accuser failed to prosecute him to conviction. The proceeding itself had indeed operated as no light punishment; and this consideration might probably facilitate the passing of the vote by which it was terminated. But by this management, the public was deprived of the only interest it had in the prosecution,—the acquittal of an innocent citizen, or the example of a punished delinquent. Thus, however, ended the first attempt made by this parliament to punish Indian delinquency.

Recurring to the first set of forty-five resolutions presented by Mr. Dundas, on the 25th of April, 1782, we must observe, that they set out with establishing certain principles of justice and policy, as the basis of the government of India; they then exhibit many censures on the Court of Directors, and the Governor-General, for pursuing measures ruinous and disgraceful to the interest of both countries;—and conclude with approving certain instructions sent in some previous dispatches, from the Directors of the Company, for promoting the attainment of peace.

One of these resolutions however acknowledges, that on the success of Hyder in the Carnatic, the Governor-General (Mr. Hastings) gave proof of the most important exertions for the assistance of Madras, the obtaining of peace, and regaining the friendship of the Nizam.

These resolutions were severally agreed to by the House, on the 28th of May; and in addition to the general declaration of the sense of Parliament, Mr. Dundas said, he should move the House to come to a specific resolution for the recall of Mr. Hastings and Mr. Hornby. That he was urged to take this step by an account which had lately arrived from India of an act of the most flagrant violence and oppression, and of the grossest breach of faith, committed by the former against Cheit Sing, the Rajah of Benares. He entered at large into the nature of that transaction, and concluded with moving the following resolution:

“That Warren Hastings, Esq. Governor General of Bengal, and William Hornby, Esq. President of the Council at Bombay, having in sundry instances acted in a manner repugnant to the honor and policy of this nation, and thereby brought great calamities on India, and enormous expences on the East India Company, it is the duty of the Directors of the said Company to pursue all legal and effectual means for the removal of the said Governor-General and President from their respective offices, and to recall them to Great-Britain.”

In consequence of this resolution of the House of Commons, the Directors took the necessary step for carrying it into effect; but as their proceedings were subject to a general court of Proprietors, the friends of Mr. Hastings had re-

course to that expedient, and on the 31st of October the order of the Court of Directors, was rescinded by a large majority.—Thus ended the second parliamentary attempt to punish Indian delinquency.

The steps taken by the Select Committee, next require our attention:—Their reports, eleven in number, took a complete review of the constitution of the East-India Company, and of the management of their affairs both at home and abroad, in their political as well as commercial transactions. On these reports was principally grounded the great plan afterwards introduced by Mr. Fox, in his bill for the better regulating the affairs of the East India Company, and the charges of impeachment which have since been instituted by the Commons against Mr. Hastings.

General Smith, the Chairman of the Select Committee, on the 18th of April, presented ten resolutions to the House, in three of which it was stated, “That Warren Hastings, and Sir Elijah Impey, Chief Justice of the Supreme Court of Bengal, had been concerned, the one in giving, and the other in receiving, an office tenable at the pleasure of the servants of the Company, contrary to the true intent of the act of 13 Geo. III. and that this unjustifiable transaction between them was attended with circumstances of evil tendency and example.”—These resolutions being agreed to by the House, an address was ordered to be presented to the King, to recall Sir Elijah Impey to answer for his conduct in the transaction aforesaid.

At the end of the session of 1782, it was signified from the throne, “That the consideration of the affairs of the East Indies would require to be resumed as early as possible, and to be pursued with a serious and unremitting attention.”

Various plans were proposed, previous to the month of November 1783, when Mr. Fox, then Secretary of State, brought forward a bill for regulating the Company:—the principles of this bill, and the violent debates to which it gave birth, are too recent in the public memory to need a recapitulation here.—Though it passed the Commons, yet the secret influence of the Crown operated to its being thrown out in the Lords, where it was rejected by a majority of nineteen Peers. The consequence of this was the downfall of the Ministry, and a general revolution of the Cabinet.

Various attempts for a new bill were afterwards made by Mr. Pitt and the new Ministry, but failed, which occasioned, with other disputes on privilege a dissolution of the House of Commons. The new Parliament and Administration seemed to be friendly to the Company, whose interests have been greatly injured by their servants at home and abroad. The Nabobs and Rajahs, and natives of India, have been by turns bartered and despoiled under their management, and many parts of that fine country depopulated.

A diversity of opinions still continued concerning this famous bill; and a protest was entered against it in the House of Lords by five Peers. Notwithstanding, however, the regulations of this new bill, it is to be suspected, that they will produce no very material effect, unless vigorous measures be taken to enforce them. This bill, like former ones, may be deposited among the archives of the councils of the governments in the East Indies, to lie in oblivion, or be treated with contempt. Mere parchment chains cannot bind the hands of rapacity and violence. The country is too remote for Britain to interfere on every emergency. The corrupt may be bribed, the timid may be threatened into a desertion of their duty, whilst the most upright may be overpowered by violence; and, if not silenced in that country, be sent home to this, loaded with irons, to plead their cause for pretended crimes charged against them by the emissaries of the powerful delinquents, whose peculations and rapacity they endeavoured to repress; but whose riches will secure them a safe retreat, and a seat in either House of Parliament.

The order for the recall of Mr. Hastings, in consequence of the resolutions we have already stated, were finally submitted to by that gentleman;—he accordingly set sail from Calcutta, the 9th of February 1785; and on the 16th of June following, he arrived in London.

The debates, and very violent altercation to which the several bills for the regulation of India gave rise—the removal of Ministers occasioned thereby—
the

the new election—the Westminster scrutiny, and a multiplicity of other business to fully occupied the attention of the Commons and the public, as to make them for a time forget the case of individuals, and particularly the censure which had been passed on the conduct of the Company's servants in their Indian departments:—and it was not until the 20th of June, 1785, that Mr. Burke gave notice, in the House of Commons, “That if no other gentleman would undertake “the business, he would at a future day make a motion respecting the conduct “of a gentleman just returned from India.”

Mr. Burke's promised motion, however, did not take place till the 17th of February, 1786, when he moved for a copy of the correspondence which had passed from January 1785, to January 1786, between Warren Hastings, Esq. and the Court of Directors of the East India Company, including his correspondence since his arrival.

This first motion of Mr. Burke produced a very long debate, that turned chiefly, however, upon a point of order with respect to the regularity of the proceedings;—we shall just report the substance of the debate. An objection was started by the Master of the Rolls, and supported by Mr. Nichols, Mr. S. Smith, Mr. Dundas, Mr. Jenkinson, the Lord Advocate of Scotland, the Solicitor General, Mr. Young, Sir Gregory Page Turner, Mr. Grosvenor, and Mr. Wilberforce—that the business of the Committee was to receive charges and not to hear evidence; for until the charges were received, it would be impossible for gentlemen to know to what points the witness could be examined; and indeed it would not be less to determine, whether there was really any impeachable matter in the different articles which might be produced as the ground for the impeachment of Mr. Hastings: and consequently it would be suspending the time of the Committee to make it sit from day to day to hear evidence before it could be known whether such evidence would in the end be applicable to the object of an impeachment of Mr. Hastings. Besides, it would not be less contrary to the established rule or order of the House than of all courts of justice, that accusation should precede the evidence; for the latter was a relative term, and signified that “which makes evident or plain.” On the other hand, Mr. Fox, Mr. Burke, Mr. Sheridan, Mr. Ellis, Mr. Wyndham, and others, maintained that the Committee, so far from being restrained to the bare receiving of charges, was in fact a Committee of enquiry; for it appeared from the order of the day, that the Committee was to take into consideration the papers relative to India; and by the same order, witnesses were bound to attend, and were attending. It would, therefore, be an extraordinary proceeding, if the chairman was to quit the chair, and report to the House, that the Committee, though directed to take papers into consideration, had considered none; though ordered to examine witnesses, had examined none. If the charges ought to have preceded the production of evidence, the gentlemen who advanced such a position ought to have attended to the House sooner, and prevented it by their advice from doing so absurd a thing, as to order the Committee to examine witnesses, and take papers into consideration, before the charges, to which they were to be applied, were produced. But, in fact, when the Right Honourable Member (Mr. Burke) had moved for the papers, he had, at the express desire of the House, stated a charge, not especial indeed, but a general one, as a preamble to each motion, and thus pointed out the particular point to which each paper was applicable.

Mr. Burke declared, that, bowing to the authority of the Committee, he would, notwithstanding his own objection to such a proceeding, bring forward his charges, at least such of them as he had prepared. The first of them was produced, and read merely *pro forma*.

Upon this it was agreed that the chairman should report progress, and ask leave to sit again, for the purpose of receiving all the charges, and of taking them into consideration at a subsequent period.

APRIL 4.

Mr Burke, in his place, charged Warren Hastings, Esq. late Governor-General of Bengal, with sundry High Crimes and Misdemeanors; and presented to the House several articles of charge of High Crimes and Misdemeanors against the said Warren Hastings, which consist of the following particulars:

I. With

I. With gross injustice, cruelty, and treachery against the faith of nations, in hiring British foldiers for the purpose of extirpating the innocent and helpless people who inhabited the Rohillas.

II. With using the authority delegated to him through the East India Company, for treating the King Shaw Allum, Emperor of Indostan, or otherwise the Great Mogul, with the greatest cruelty, in bereaving him of considerable territory and withholding forcibly that tribute, of 26 lacks of rupees, which the Company engaged to pay as an annual tribute or compensation for their holding in his name the Duannee of the rich and valuable provinces of Bengal, and Bahar, and Orissa.

III. With various instances of extortion, and other deeds of mal-administration against the Rajah of Benares. This article consisted of three different parts, in each of which Mr. Hastings was charged with a series of the most wanton oppressions and cruelties. He gave in papers concerning the rights of the Rajah, his expulsion, and the sundry revolutions which have been effected by the British influence under the controul of the late Governor-General in that Zemindary.

IV. The numerous and insupportable hardships to which the Royal Family of Oude had been reduced, in consequence of their connection with the Supreme Council.

V. With having, by no less than six revolutions, brought the fertile and beautiful provinces of Farruckabad to a state of the most deplorable ruin.

VI. With impoverishing and depopulating the whole country of Oude, and rendering that country, which was once a garden, an uninhabited desert.

VII. With a wanton, an unjust, and pernicious exercise of his powers, and the great situation of trust which he occupied in India, in overturning the ancient establishments of the country, and extending an undue influence by conniving at extravagant contracts, and appointing inordinate salaries.

VIII. With receiving money against the orders of the Company, the Act of Parliament, and his own sacred engagements; and applying that money to purposes totally improper and unauthorized.

IX. With having resigned by proxy for the obvious purpose of retaining his situation, and denying the deed in person, in direct opposition to all those powers under which he acted.

X. Accuses him of treachery to Muzuffer Jung, who had been placed under his guardianship.

XI. Charges him with enormous extravagance and bribery in various contracts, with a view to enrich his dependants and favorites.

These are the principal of Twenty Charges exhibited against Mr. Hastings; on most of which he was voted deserving of impeachment by the Honorable House of Commons:—the other nine are chiefly connected with, and dependant upon the foregoing.

APRIL 26.

Major Scott moved for leave to bring up a petition from Warren Hastings, Esq. praying to be heard by himself against the matter of the charges now exhibited to the House against him, and also a copy of those charges; which was agreed to.

The petition was then brought up, and read at the table.

Mr. Burke then presented other two charges relating to a libel written by Mr. Hastings against the Court of Directors—and the final abandonment of Shaw Allum, on concluding a treaty with the Mahrattas.

MAY 1.

The Speaker, in consequence of the resolution of the House, called Mr. Hastings to the bar, who, having been informed of the purpose for which he was admitted there, observed, that he was not accustomed to public speaking, and therefore begged the House would indulge him with the hearing of what he had drawn up in his defence. His memory was not remarkably tenacious, and as the relation or contradiction of the charges brought against him required frequent references to certain documents and papers necessary to be produced, he flattered himself that the House would easily conceive the propriety of his request. This having been readily assented to, Mr. Hastings proceeded to read his

T H E
T R I A L
O F
WARREN HASTINGS, Esq. &c.

FIRST DAY.

WEDNESDAY, FEBRUARY 13.

THE House met at ten, and by eleven a message was sent to the Commons, that the House was immediately going to adjourn to Westminster-Hall, to proceed upon the trial of Warren

Hastings, Esq. The message was immediately returned, that the Commons were ready to substantiate their charges. The Lords were then called over by the Clerk, and arranged by Sir Isaac Heard, Principal King at Arms, when upwards of two hundred proceeded in order to Westminster-Hall.

* Previous to their Lordships' approach to the Hall, about eleven o'clock, her Majesty, with the Princesses Elizabeth, Augusta and Mary, made their appearance in the Duke of Newcastle's gallery. Her Majesty was dressed in a fawn-coloured satin, her hair dress plain, with a very slender sprinkling of diamonds. The Royal box was graced with the Duchesses of Gloucester and the young Prince. The ladies were all in morning dresses; a few with feathers and variegated flowers in their head-dresses, but nothing so remarkable as to attract public attention.

Mrs. Fitzherbert was in the Royal box.

The Dukes of Cumberland, Gloucester and York, and the Prince of Wales, with their trains, followed the Chancellor, and closed the procession.

Upwards of two hundred of the Commons with the Speaker, were in the gallery.

The Managers, Charles Fox and all, were in full dress.

But a very few of the Commons were full dressed—some of them were in boots. Their seats were covered with green cloth—the rest of the building was "one red."

Mr. Hastings stood for some time—On a motion from a Peer, the Chancellor allowed, as a favour, that the Prisoner should have a chair—And he sat the whole time—but occasionally, when he spoke to his Counsel.

His Counsel were Mr. Law, Mr. Plomer, Mr. Dallas.—For the Commons—Dr. Scott and Dr. Lawrence; Messrs. Mansfield, Piggot, Burke, and Douglas.

A party of horse-guards, under the command of a Field Officer, with a Captain's party from the horse-grenadiers, attended daily during the trial.

A body of three hundred foot-guards also kept the avenues clear, and a considerable number of constables attended for the purpose of taking offenders into custody.

The Pets were preceded by
 Lord Chancellor's Gentlemen Attendants,
 two and two,
 Clerk Assistant of the House of Lords, and
 Clerk of the Parliaments.
 Clerk of the Crown in Chancery.
 Clerk of the Crown in the King's Bench.
 Masters in Chancery, two and two.
 The Judges.
 Serjeants Adair and Hill.
 Yeoman Usher of the Black Rod.
 Sir Francis Molyneux, Gentleman Usher of
 the Black Rod.
 Two Heralds.

The Lords Barons, two and two.
 The Lords Bishops, two and two.
 The Lords Viscounts, two and two.
 The Lords Earls, two and two.
 The Lords Marquisses, two and two.
 The Lords Dukes, two and two.

The Mace-Bearer.

The Lord Chancellor, with his train borne.
 (All in their Parliamentary Robes.)

The Lords Spiritual seated themselves on
 their Bench, which was on the side on which
 they entered; as they passed the throne, they
 bowed to it, as if the King was seated in
 it.

The Temporal Lords crossed over the House,
 and each made a respectful bow to the seat of
 Majesty.

In this procession, the juniors of each class
 of Nobility walked first; and the seniors last;
 of course the last held the most honourable
 station.

As soon as their Lordships were seated in
 the Lower Chamber, the Lord Chancellor
 asked leave for the judges to be covered.

At twelve the Court was opened, and the
 Serjeant at Arms, with a very audible voice,
 made the usual proclamation; after which,
 in old blunt English, he announced "War-
 ren Hastings, Esq. to come forth in Court
 to live **THOU AND THY BAIL**, otherwise
 the recognizance of thee and thy bail will
 be forfeited."

Mr. Hastings immediately appeared at the
 Bar with his two sisters, Mr. Sullivan and
 Mr. Sumner, and immediately dropped on his
 knees; when the Lord Chancellor signified
 that he might rise. He seemed very infirm,
 and much indisposed. He was dressed in a
 plain poppy-coloured suit of clothes.

After Mr. Hastings appeared at the Bar, a
 Proclamation as follows was made:

"Whereas Charges of High Crimes and
 Misdemeanors have been exhibited by the
 Knights, Citizens, and Burgesses in Par-
 lament assembled, in the name of them-
 selves, and of all the Commons of Great
 Britain, against Warren Hastings, Esq.

they against them, and are to take notice,
 "th^t he ^{is} on his trial, and they
 "may come forth in order to make good the
 "said charges."

Proclamation being made, the Lord Chan-
 cellor rose, and addressed the prisoner as fol-
 lows:—

"Warren Hastings,

"You are called upon, after every expe-
 dient allowance, for your defence. You
 "have had bail: you have Counsel. Much
 "time also has been granted you—becoming
 "well the circumstances of your case.

"For the matter in the Charges is most
 "momentous, and the dates are remote,
 "since the occurrences in those charges al-
 "leged against you are said to have been
 "committed

"These advantages you must understand,
 "while you feel.—You are to deem them
 "not an indulgence of this House—but the
 "fair claim of right—a concession of nothing,
 "but what you have in common with all
 "around you—what every British subject
 "may ask, and every British tribunal must
 "allow.

"Conduct your Defence, therefore, in a
 "manner that may best your station, and the
 "magnitude of the charges against you.—
 "Estimate rightly the high character of those
 "you have to answer—the Commons of Great
 "Britain!—who, at once, perhaps, attach
 "likelihood to doubt—and enforce authori-
 "ty, certainly, on accusation."

To which Mr. Hastings made almost ver-
 batim the following answer:

"My Lords,

"I am come to this high tribunal equally
 "impressed with a confidence in my own in-
 "tegrity, and in the justice of the Court be-
 "fore which I stand."

This ceremony being over, the reading
 Clerk began to read the first charge, and with
 the Clerk Assistant, Deputy Clerk of the
 Crown, and another gentleman who attended
 as an additional Clerk, their Lordships got
 through the reading of seven charges and seven
 answers.

The Marquis of Stafford, when it was im-
 possible for the Clerk to see any longer, moved
 to adjourn to the Chamber of Parliament;
 when, upon motion, the further consideration
 of the above trial was put off until ten o'clock
 next morning.

SECOND DAY.

THURSDAY, FEBRUARY 14.

The names of the House being called over
 by Garter King at Arms and his Assistant,
 the procession went in the same order as the
 preceding day, and being seated in the Court,

the

the same formalities took place as at the opening of the business; after which Mr. Hastings was called to the bar with his bail, Mr. Sullivan and Mr. Sumner.

The remaining twelve charges and the answers were then read by the Clerks attending. It was near five o'clock before the reading was finished, and the conclusion of Mr. Hastings' defence evidently made a deep impression upon the audience.—The Lords immediately returned to their House, and adjourned.

THIRD DAY.

FRIDAY, FEBRUARY 15.

The Court being seated, † and after the usual proclamation Mr. Hastings appearing at the bar, the Lord Chancellor demanded who appeared in behalf of the Commons to substantiate the Charges.

Mr. Burke immediately rose, and made his obedience to the Court; and every eye was at this moment rivetted upon him. "He stood forth," he said, "at the command of the Commons of Great Britain, as the accuser of Warren Hastings."

Mr. Burke then stopped for above a minute, at the end of which he resumed, and continued his speech for two hours and a half. It was grave and temperate; but was pathetic and affecting. Every expression and sentiment was appropriate; and though in the progress he led the ignorant to the most familiar acquaintance with the origin of the crimes and the evils of India, he astonished the most knowing with the new aspect which he gave to the whole, after it had been so long agitated and so thoroughly discussed.

He apostrophized the tribunal before which he stood—congratulated his country on possessing so powerful an instrument of justice, and so authoritative a censor of abuse, and hoped that no corruptions would ever taint, and no subtleties of special pleading and Old Bailey prevarication be able to undermine it.

He stated, that the subject matter of the present Impeachment had been in a course of investigation and enquiry for nearly fourteen years before the Commons of England; that the result was, their having found ample reason to conclude, that Mr. Hastings ought, in justice to the millions who had lived under his government in Asia, and in justice to the national character, which he appeared to have disgraced by his conduct in the exalted station of Governor General of India, to be put upon his trial. He then went into a general view of the history of Hindostan, and of its particular history as affected by English enterprise and English rapine. He enumerated and described the various ranks of English society in India, and carried them through their several gradations of writer, factor, junior merchant, and senior merchant, up to the state officers in the service. He passed from this to the Indian character, and drew the picture of a Banyan in the most forcible and glowing colours. He next went into a short but admirably drawn history of the people, religion, manners, and revolutions of the Gentoo tribes—their division into casts—their local religion and prejudices—theirruption and change made by the Mahometan—the revolution accomplished by the Tartar Tamerlane, and the slow but more portentous consequences of the English incursion. In the course of his speech he worked up the passions of the Court in so powerful a manner, when he described the sufferings of the native Hindoos under the government of Mr. Hastings, that the Court repeatedly called out HEAR! HEAR! At half after two he concluded his exordium, and brought down the subject to the year 1756; at which era, he said, if their Lordships would give him leave, he would begin to trace the conduct of Mr. Hastings; but being then much fatigued, he prayed permission to proceed the next day, which was granted, and the cause adjourned.

* The attendance of the House of Commons was this day very thin—the number of Members, for a few minutes near the close, was 40—through the greater part of the day, there were not 20 present.—The audience, too, was comparatively thin.

There were present near 80 Temporal Peers—and 15 Bishops, including York and Canterbury.

† There were present, Barons 54—Bishops 17—Earls, Marquesses, and Viscounts 68—Dukes 12—Judges 9—Princes of the Blood 4—in all 164.

FOURTH DAY.

SATURDAY, FEBRUARY 15.

The Court being opened with the usual solemnities *, and Mr. Hastings called to the bar,

Mr. Burke resumed his introductory address to the Court. He commenced by observing, that in his speech of the preceding day, he had thought it necessary, for the precision of their future judgment, to describe at large the situation and manners of the people of India, though that description did not tend directly to the crimination of Mr. Hastings. Though he had spoken of the tyranny of their Subahs, Mr. Hastings was no farther culpable, in that respect, than in having followed their steps with a *SERVILE FIDELITY*:—he had mentioned the weakness of some particular institutions; but there Mr. Hastings was only to blame, where he had abused that weakness in the pursuance of interested purposes. This general statement, however, was necessary to the understanding of the specific facts; which, with their substantiation by evidence, should, in due time, be submitted to the Court.

The era, Mr. Burke observed, of Europeans first landing in Hindostan, was not less remarkable than it might have been glorious, if proper measures had been pursued; if the discoveries of a more enlightened part of the globe had been communicated to its innocent inhabitants; and if the reformed Christianity of this Island had been properly inculcated. But this unfortunately was not done. In the place of friendly communication, the traces of European accesse were marked by treachery and rapine. Those who first advanced, had undoubtedly to pass over a vast river, with the depth of which they were wholly unacquainted; but by frequent practice, a bridge was laid, 'over which the lame might pass, and the blind might grope their way.' The arts of plunder might have been supposed to have reached their height under the command of Lord Clive, but when that nobleman returned to Europe, it appeared that he left an abundant crop of successors behind. All these too were inured to the practices of rapine, and encouraged to such a degree by repeated success, that there was not a captain of a band of ragged sepoy who did not look to the

deposition of a Subah, and the plunder of a province.

Mr. Burke then proceeded to illustrate these general positions, by entering into a detailed account of the transactions in India, from 1760 to the year 1774, when Mr. Hastings returned to India in the character of President of the Supreme Council. He dwelt at large on the several revolutions which took place in that period, when, by the intervention of the Company's troops, the Sovereignty was transferred from Sujah Dowlah to Meer Jassier, and again from Meer Jassier to his son-in-law, Cossim Ally Cawn. In the latter of these, Mr. Hastings, who was then Resident at the Durbar, had been employed. Treachery, he said, was found necessary to effectuate the purposes of the English, and therefore the assistance of Warren Hastings was essentially requisite. He dwelt also, at length, on the oppression of Mahomed Reza Cawn, the famine which succeeded, and the events in general which took place before the appointment of the Supreme Council. But though a detail so various and complicated it would be vain to follow him.

On speaking of the appointment and character of Mr. Hastings, the conduct of this gentleman, he said, had been distinguished for an adherence, not to the general principles which actuate mankind, but to a kind of *GEOGRAPHICAL MORALITY*—a set of principles suited only to a particular climate, so that what was speculation and tyranny in Europe, lost both its essence and its name in India. The nature of things changed, in the opinion of Mr. Hastings; and as the seamen have a custom of dipping persons crossing the *EQUINOCTIAL*, so by that operation every one who went to INDIA was to be *UNBAPTIZED*, and to lose every idea of religion and morality which had been impressed on him in EUROPE. But this doctrine, he hoped, would now no longer be advanced. It was the duty of a British Governor to enforce British laws; to correct the opinions and practices of the people, not to conform his opinion to their practice; and their Lordships would therefore undoubtedly try Mr. Hastings by the laws with which they were acquainted, not by laws which they did not know. But Mr. Hastings had pleaded the local customs of Hindostan, as requiring the

* There were present, Barons 54—Bishops 17—Viscounts, Earls, and Marquisses, 68—Dukes 14—Judges 9—the Lord Chancellor, the Royal Dukes, with the Prince of Wales, closed the procession—Total 173; being a greater number than appeared on any of the former days.

coercion of arbitrary power*. He claimed ARBITRARY POWER. From whom, in the name of all that was strange, could he derive, or how had he the audacity to claim, such a power? He could not have derived it from the East India Company, for they had none to confer. He could not have received it from his Sovereign, for the Sovereign had it not to bestow. It could not have been given by either House of Parliament—for it was unknown to the British Constitution!†

Yet Mr. Hastings acting under the assumption of this authority, had avowed his rejection of British Acts of Parliament, had gloried in the success which he pretended to derive from their violation, and had on every occasion attempted to justify the exercise of arbitrary power in its greatest extent.

[Mr. Burke being greatly exhausted, Mr. Adam read a letter to this effect from Mr. Hastings to the Court of Directors.]

Having thus avowedly acted in opposition to the laws of Great Britain, he fled, but in vain, for shelter to other laws and other usages. Would he appeal to the Mahomedan law for his justification? In the whole Koran there was not a single text which could justify the powers he had assumed. Would he appeal to the Gentoo Code? There the effort would also be vain; a system of stricter justice, or more pure morality, there did not exist. It was therefore equal whether he fled for shelter to a British Court of Justice or a Gentoo Pagoda; he in either instance stood convicted as a daring violator of the laws. If he appealed, indeed, to the practices of the country, it would be granted, that other speculators and other tyrants had existed before Warren Hastings; but that was by no means a justification of his conduct: on the contrary, as they did not pretend to act according to the laws, so they were punished by their superiors for acting in opposition to the laws. Mr. Burke here recited some instances where similar offences had been punished in Officers of finance by

the Sovereigns of the district, as being contrary to the laws of Hindostan.

He concluded a speech of three hours and ten minutes, by an apology to the Court for the time he had occupied. If he had been diffuse, he hoped their Lordships would attribute it solely to an anxious wish that justice should take place in a cause, the most complicated and momentous, perhaps, that ever was submitted to any Court. He should now proceed, he said, to substantiate the several charges, beginning with that corrupt rapacity from which the delinquency had sprung, and proceeding from thence to the other branches of guilt, which would appear to have been produced from that ruling principle, both in the internal government of Bengal, and in the other provinces, which he had so significantly called his EXTERNAL RESOURCES.

Mr. Burke appeared to be greatly exhausted by the delivery of this speech.

The Court adjourned to Monday.

FIFTH DAY.

MONDAY, FEBRUARY 18.

The Lords having taken their seats, Mr. Burke resumed his speech.

He said, that the government of Mr. Hastings was founded in bribery and corruption; that his administration was one continued scene of peculation. Nunducumar, a man of high rank, had become the accuser of Mr. Hastings; but he was soon taken off by a prosecution for felony. But Nunducumar was not the only accuser; if every thing that man had said of Mr. Hastings had been scandalously false, still it appeared upon the oath of one of the most illustrious Ladies, or Princesses in Bengal, that Mr. Hastings had received from her, or her agents, a bribe of 40,000l. sterling. This oath, and this charge of peculation, were upon record in the archives of the East-India Company; but no trace could be found of any answer made by Mr. Hastings to a charge so injurious to his character.

* When Mr. Burke's argument led him forth against arbitrary power, he called together all the forces of Truth and Equity—not only the Genius of England, but of all Asia, clamorous on his side—the Koran—the Institutes of Timur—the Gentoo Code—all, at every idea of tyrannical usurpation, as strong and steadfast as our Statutes at Large.—In short, said he, "Talk to me any where of Power, and I'll tell you of Protection! Mention a Magistrate, and the idea follows of Property! Shew me any Government, and you are to see the proposed interest of those governed!—Power constituted otherwise is a monster—that is impossible!—in every system, where there is any notion of the Justice of God, or the Good of Mankind!

* To act or think otherwise is blasphemy to religion, no less than uproar in local order! For "Every good and perfect gift is of God;"—and what good gift of God to Man can be more perfect, than the innate idea of Justice and Mercy—the Law written in our Hearts—the PRIMUM VIVENS, the ULTIMUM MORIENS, of every being that has the "beast of reason!"

There was also evidence, he observed, of a bribe of 40,000*l.* more, received for a judgment pronounced by Mr. Hastings, in a cause wherein the half-brother of a deceased Rajah, and an adopted son of the same Rajah, were concerned; they both claimed the inheritance of the deceased, which was of immense value; for he had died possessed of a tract of land equal in extent to all the northern counties of England, Yorkshire included.

The system of peculation pursued by Mr. Hastings had met with many checks, from the integrity of Gen. Clavering, Col. Monson, and Mr. Francis; but it had extended so far, that it could not be concealed from those who felt for the honour of the British name and for humanity. Mr. Hastings knew this, and having reason to apprehend that the enquiry instituted by Parliament into delinquencies on the coast of Coromandel, would at last reach Bengal, he suddenly had recourse to an expedient for securing himself from the resentment of his constituents, by making them gainers by his peculation. Finding himself on the eve of detection, he paid into the Company's treasury a vast sum of money which he had received contrary to law; but then he said he did not receive it for his own use, but for that of the Company. However, there was in this instance a circumstance that seemed to contradict his assertion, "That he had received the money for the use of the Company;" it was this;—When he paid the money into the treasury at Calcutta, he took bonds for it; so that, in fact, the Company, to whom this money was said to belong, was made debtor to Mr. Hastings for the full amount of it. On his being questioned at home by the Court of Directors, and asked why he had taken bonds for money not his own, his answer was, "That he did not know; he could not tell at that distance of time (less than three years); it might be to prevent the curious at Calcutta from being acquainted with the proceedings of the state; that he ought not to be pressed now for an account of motives which he no longer remembered, and of which he could not give any account now, as his papers were in India."

Peculation slept for some time, whilst Mr. Hastings had a majority of the Council against him. But Gen. Clavering and Col. Monson having been removed by death, and Mr. Francis, harassed and tired of his situation, having resigned, the Council then consisted of only Mr. Hastings and Mr. Wheeler; and the former having a casting voice, had in his own person a majority in the Council; or, in other words, the whole Government of India was vested in himself alone.—Then it was that he resolved to open anew the channels of pecula-

tion. Six provincial Councils had been established for the collection and management of the public revenue; but these Councils he abolished, and in their room established one single Council, under whose management was placed the administration of the whole revenue of the kingdoms of Bengal, Bahar, and Orissa. This new Council he composed entirely of his own creatures and favourites; but as it was necessary they should have for their Secretary some native, acquainted with the laws and customs of the country, he appointed one who was entirely devoted to him.—This was the famous, or rather infamous Congo Burwant Sing. Of this man there were not two opinions; all the friends as well as the enemies of Mr. Hastings agreeing, that he was the most atrocious villain that India ever produced. The Members of the new Council soon felt that they were cyphers, and mere tools to this detestable instrument of corruption. This they themselves expressed in a letter, which Mr. Burke read, in which they said that he dived into the secrets of families, availed himself of them, and had it in his power to lay the whole country under contribution. Such was the confidential agent of Mr. Hastings. Before that Gentleman had appointed him Secretary to the new Council, he knew the public opinion of the man; and yet he wrote to the Court of Directors, that this Congo Sing was generally spoken ill of, but that he knew no harm of him: He knew, however, that he was a man of great abilities, and therefore he employed him.

Next in infamy to Congo Burwant Sing, and second only to him in villainy, was Devi Sing; one of the most shocking monsters that ever stained the page of history.—This villain, driven on account of his infamous administration from one important station which he held, was able to obtain, through his partner in iniquity, Congo Burwant Sing, a most lucrative situation under the Company: he was admitted at a time when he was a bankrupt, and owed 270,000*l.* to farm the revenue of a very large district. One part of his instructions was, that he should not raise the rents, or impose new taxes upon the inhabitants; but such instructions did not weigh much with a man, who knew that if he broke through them, he was sure of impunity, through the powerful influence of Congo Burwant Sing.

He therefore resolved by plunder and rapine of every sort, to make the most of his bargain. He immediately raised the rents, contrary to his instructions:—he threw the people of quality, as well as others, into prison, and there made them give him bonds to what amount he pleased, as the purchase of their

their liberty.—These bonds he afterwards put in force.—First, he put their demefne lands up to auction, and they were knocked down at one year's purchafe, though the ufual price of land in that country was ten. The real purchafer was himfelf.—Next he fold the lands they held by leafe; next the lands given by the then owners, or their anceftors, for the pious and humane purpofes of providing for the fick and infirm; laftly, he fold even the very ground deftined for the burial of the owners; and this was to them, from the nature of their education and religion, the moft heart-rending of all their loffes.—This, however, was not all.—He made ufe of a fpecies of pillory, which in India is more dreadful than death, becaufe it drives people from their *caft*. Thofe who have been difgraced by this pillory, no matter whether with or without juft caufe, are, as it were, excommunicated; they are difowned by their own tribe, nay, by their own neareft relations, and are driven into the fociety of the outcafts of all fociety. This pillory is a *bullock*, with a drum on each fide, and the perfon who is once feated on it, is ever after difgraced and degraded, he and all his pofterity. Devi Sing had this tremendous bullock walking through the villages; at his approach the inhabitants all fled: and fo general was their defection of their habitations, that an Englifhman travelled 15 miles without feeing a fire, or a light in any houfe.

The poor Ryots, or husbandmen, were treated in a manner that would never gain belief, if it was not attefted by the records of the Company; and Mr. Burke thought it neceffary to apologize to their Lordfhips for the horrid relation, with which he would be obliged to harrow up their feelings: the worthy Commiffioner Patterson, who had authenticated the particulars of this relation, had wifhed that for the credit of human nature, he might have drawn a veil over them; but as he had been fent to enquire into them, he muft, in difcharge of his duty, ftate thofe particulars, however fhocking they were to his feelings. The cattle and corn of the husbandmen were fold for lefs than a quarter of their value, and their huts reduced to afhes! the unfortunate owners were obliged to borrow from ufurers, that they might difcharge their bonds, which had unjuftly and illegally been extorted from them while they were in confinement; and fuch was the determination of the infernal fiend, Devi Sing, to have thofe bonds difcharged, that the wretched husbandmen were obliged to borrow money, not at 20, or 30, or 40, or 50, but at six hundred per cent.

to fatisfy him! Thofe who could not raife the money, were moft cruelly tortured: cords were drawn tight round their fingers, till the flefh of the four on each hand was actually incorporated, and become one folid mafs: the fingers were then feparated again by wedges of iron and wood driven in between them.—Others were tied two and two by the feet, and thrown acrofs a wooden bar, upon which they hung, with their feet uppermoft; they were then beat on the foles of the feet, till their toenails dropped off.

They were afterwards beat about the head till the blood gufhed out at the mouth, nofe, and ears; they were alfo flogged upon the naked body with bamboo canes, and prickly bufhes, and, above all, with fome poifeneous weeds, which were of a moft cauftic nature, and burnt at every touch.—The cruelty of the monfter who had ordered all this, had contrived how to tear the mind as well as the body; he frequently had a father and fon tied naked to one another by the feet and arms, and then flogged till the fkin was torn from the fleft; and he had the devilifh fatisfaction to know that every blow muft hurt; for if one efaped the fon, his fenfibility was wounded by the knowledge, he had that the blow had fallen upon his father: the fame torture was felt by the father, when he knew that every blow that miffed him had fallen upon his fon.

The treatment of the females could not be defcribed:—dragged forth from the inmoft recesses of their houfes, which the religion of the country had made fo many fanctuaries, they were expofed naked to public view; the virgins were carried to the Court of Juftice, where they might naturally have looked for protection; but now they looked for it in vain; for in the face of the Minifters of Juftice, in the face of the fpectators, in the face of the fun, thofe tender and modeft virgins were brutally violated. The only difference between their treatment and that of their mothers was, that the former were difhonoured in the face of day, the latter in the gloomy recesses of their dungeons. Other females had the nipples of their breasts put in a cleft bamboo, and torn off. What modesty in all nations moft carefully conceals, this monfter revealed to view, and confumed by flow fires; nay fome of the monftrous tools of this monfter Devi Sing had, horrid to tell! carried their unnatural brutality fo far as to drink in the fource of generation and life*.

Here Mr. Burke dropped his head upon

* In this part of his fpeech Mr. Burke's defcriptions were more vivid—more harrowing—and more horrid—than human utterance on either fact or fancy, perhaps, ever formed before.

his hands a few minutes ; but having recovered himself, said, that the fathers and husbands of the hapless females were the most harmless and industrious set of men. Content with scarcely sufficient for the support of nature, they gave almost the whole produce of their labour to the East-India Company : those hands which had been broken by persons under the Company's authority, produced to all England the comforts of their morning and evening tea ; for it was with the rent produced by their industry, that the investments were made for the trade to China, where the tea which we use was bought.

He then called upon their Lordships to prevent the effects of the Divine indignation upon the British empire, by bringing to justice the man who could employ so infernal an agent. Those wretched husbandmen would, with those shattered hands lifted up to Heaven, call down its vengeance upon their unders : he conjured their Lordships to avert that vengeance, by punishing them who had so grossly abused the power given them by this country.

Mr. Burke was here taken ill ; but he soon recovered, and was proceeding, when he was seized with a cramp in his stomach, and was disabled from going on. He was soon relieved from his pain, but was too exhausted to be able to proceed.

Lord Derby, on a nod from the Chancellor and the Prince of Wales, went to Mr. Burke ; who, yielding to his Lordship and other friends, agreed to defer the rest of his speech till next day.

SIXTH DAY.

TUESDAY, FEBRUARY 19.

After the usual ceremonies, Mr. Burke rose and proceeded upon the remaining part of the charges. At the conclusion, he made a most solemn appeal to the honour, the dignity, the justice, and the humanity of the Court, to enter impartially into the great cause which was before them, and to determine accordingly *.

Mr. Fox rose, and stated to their Lordships, that he was directed by the Committee to submit to their Lordships, that it was their

fore. The agitation of most people was very apparent—and Mrs. Sheridan was so overpowered, that she fainted.

On the subject of the Ministers of these infernal enormities, he broke out with the finest animation !

" My Lords," exclaimed Mr. Burke, " let me for a moment quit my delegated character, and speak entirely from my personal feelings and conviction. I am known to have had much experience of men and manners—in active life, and amidst occupations the most various !—From that experience, I now protest—I *never* knew a man who was *bad*, fit for service that was *good* ! There is always some disqualifying ingredient mixing and spoiling the compound ! The man seems *paralytic* on that side ! His muscles there have lost their very tone, and character !—They cannot move ! In short, the accomplishment of any thing good, is a physical impossibility for such a man. There is decrepitude as well as distortion—he *could not* if he would, is not more certain, than he *would not*, if he could !"

Shocking as are the facts which Mr. Burke related, and which he says he finds recorded in the account taken by Mr. Patterson, who was appointed Commissioner to enquire into the circumstances of this dreadful business, and of a rebellion which took place in consequence, Mr. Burke says, of the abovementioned cruelties ; our readers must see that Mr. Hastings cannot be responsible for them, unless it shall be proved that he was privy to, and countenanced the barbarities.

* " I charge (cried he) Warren Hastings, in the name of the Commons of England, here assembled, with High Crimes and Misdemeanors !—I charge him with Fraud, Abuse, Treachery, and Robbery !—I charge him with Cruelties unheard-of, and Devastations almost without a name !—I charge him with having scarcely left in India—what will prove Satisfaction for his guilt !"

" And now, (added he, in language which faintly hearing, we almost tremble to convey) and now, (added he) I address myself to this Assembly, with the most perfect reliance on the justice of this High Court. Amongst you, I see a venerable and Religious Band, whose province and whose duty it is—to venerate that Government which is established in piety and mercy. To them, what must have been the principles of Mr. Hastings ?

" Amongst you, I see the Judges of England, the Deliverers of Law founded on equal justice. To them, what must have been the Usurpations, the Tyranny, the Extortions of Warren Hastings ?

" Amongst you, I descry an illustrious and virtuous train of Nobles—whose Forefathers have fought and died for the Constitution ! men who do even less honour to their Children, than

attention to proceed article by article, to adduce evidence to substantiate each charge, then to hear the prisoner's evidence and defence, and afterwards to be at liberty to reply.

The Lord Chancellor called upon Mr. Law, senior Counsel for Mr. Hastings, to know whether this mode would be agreeable. Mr. Law answered—No; upon which his Lordship observed to the Committee, that as it was his wish that substantial justice might take place, he should be glad to know the reasons which induced the Right Hon. Manager, and the Committee, to call upon the Court to adopt that mode.

Mr. Fox rose, and stated to their Lordships, that the mode proposed in such a complicated case was adopted to avoid obscurity—to place the various questions in such a clear point of view, that their Lordships might with the greater ease determine *scilicet* upon the respective merits of each article of impeachment.

Mr. Anstruther spoke to the same effect.

Earl Stanhope desired to know whether the same charges were meant to be brought forward in various shapes, and whether the same evidence was intended to be adduced in support of them?

Mr. Fox replied, that he had seen too much of this prosecution, not to know, that all the charges were made upon different grounds distinct in their nature and qualities, and requiring a different system of evidence to support them; although it might so happen in the progress of the business that the same evidences might be necessary to substantiate their charges. On his part, and on the part of the Committee and the House, he had no hesitation to declare that they meant to avail themselves of no subterfuge; they meant to bring the charges plainly, clearly, and completely home to the prisoner. There were several precedents of the kind, particularly the impeachment of the Earl of Macclesfield and the Earl of Stafford.

Earl Stanhope being satisfied with this explanation—the Lord Chancellor called upon Mr. Law for the reasons on which he supported his objection.

Mr. Law entered into a most elaborate argument to prove that it would be inconsistent

with the rules of justice to suffer the prosecution to proceed in the mode proposed by Mr. Fox. He cited the case of Archbishop Laud, and was very urgent to prove that all the cases in which impeachments had been determined article by article were by consent of the party under prosecution. In the warmth of his zeal for Mr. Hastings, he dropped a few words which reflected upon Mr. Burke, for the harsh and cruel manner in which he had opened the prosecution. It was similar, he said, to the proceedings against Sir Walter Raleigh. He was going on, when

Mr. Fox rose and said, he was commanded by the Committee, not to suffer such gross and indecent liberties to be taken in a case where the Commons of England were the prosecutors.

Mr. Law said a few words, and sat down.

Mr. Plover followed him; and Mr. Dallas, in a very long and excellent speech, endeavoured to draw the analogy between the practice of the common law in the Courts below, and that mode which ought to prevail in the present instance. He combated the precedents which were drawn from the trials of the Earl of Macclesfield and Lord Stafford, and asserted, that to try each charge, and determine upon it, would, as a necessary consequence, lead to delay, confusion, and perplexity.

Mr. Fox replied to the three Counsel in a speech that took him an hour and a half, in the course of which he attempted to confute every argument which they had urged, and to shew, that neither the prosecutors could obtain justice, the prisoner have a fair hearing, or the Court discharge the duty which they owed to their country and to mankind, unless the charges were separated, and the determination of the House obtained upon each of them.

Mr. Fox having finished, the Lords immediately withdrew to their House, and adjourned the Court to Friday.

SEVENTH DAY.

FRIDAY, FEBRUARY 22.

The Court was this day crowded to a degree beyond any thing we had hi-

" than those Children do to them—who are here assembled to guard that Constitution which they have received. From them, what must the Violator of all Forms and Constitutions deserve?

" With one voice they will encourage this Impeachment, which I here solemnly maintain. " I Impeach, therefore, Warren Hastings, in the name of our Holy Religion, which he has disgraced.—I Impeach him in the name of the English Constitution, which he has violated and broken.—I Impeach him in the name of Indian Millions, whom he has sacrificed to injustice.—I Impeach him in the name, and by the best rights of Human Nature, which he has stabbed to the heart. And I conjure this High and Sacred Court to let not these pleadings be heard in vain!"

short

thereto witnessed. The expected decision of the House of Lords * respecting the form of proceeding, and the opening of the first charge by Mr. Fox, were the apparent causes of the general anxiety.

The usual solemnities being over, the Lord Chancellor addressed the Committee.—
 “Gentlemen of the House of Commons, the House of Lords have ordered me to acquaint you, that they have made the follow-

ing order:—“To hear the whole Evidence in support of ALL the Charges of Impeachment, and THEN to let the Defendant enter on his Defence.” Upon which Mr. Fox rose and said, “My Lords, the Committee beg leave to retire for a few minutes, to consult in what manner they shall proceed.”

The Chancellor nodded his assent; and the Committee withdrew. They were out

* The Lord Chancellor had opened this business on the preceding day in the House of Lords, and in a speech of considerable length given his opinion: he was followed by the Lords Stanhope, Coventry, Abingdon, Loughborough, Richmond, Stormont, Derby, Grantley, Carlisle, and Duke of Norfolk.

The Lord Stanhope concluded his speech with moving,

“That the Managers for the Commons of Great Britain be directed neither to proceed upon the whole of the Charges, nor upon their Accusations, Article by Article, but to proceed upon the criminating Allegations one by one.”—Withdrawn.

Question was afterwards put, to agree with the Proposition as stated by the Managers for the Commons.

Contents ——— 33 Non-Contents ——— 88

Question—“That the Managers for the Commons be directed to proceed upon the whole of the Charges, before the Prisoner be called upon for his Defence.”
 Carried in the affirmative without a division.

Against this determination, however, the following Protest was entered on the Lords’ Journals:—

D I S S E N T I E N T,

1st. Because we hold it to be primarily essential to the due administration of justice, that they who are to judge have a full, clear, and distinct knowledge of every part of the question on which they are ultimately to decide: and in a cause of such magnitude, extent, and variety, as the present, where Issue is joined on acts done at times and places so distant, and with relation to persons so different, as well as on crimes so discriminated from each other by their nature and tendency, we conceive that such knowledge cannot but with extreme difficulty be obtained without a separate consideration of the several articles exhibited.

2^d. Because we cannot with equal facility, accuracy, and confidence, apply and compare the evidence adduced, and more especially the arguments urged by the prosecutors on one side, and the defendant on the other, if the whole charge be made one cause, as if the several articles be heard in the nature of separate causes.

3^d. Because, admitting it to be a clear and acknowledged principle of justice, that the defendant against a criminal accusation should be at liberty to make his defence in such form and manner as he shall deem most to his advantage; we are of opinion, that such principle is only true so far forth as the use and operation thereof shall not be extended to defeat the ends of justice, or to create difficulties and delays equivalent to a direct defeat thereof; and, because we are of opinion, that the proposition made by the Managers of the House of Commons, if it had been agreed to, would not have deprived the defendant in this prosecution, of the fair and allowable benefit of such principle taken in its true sense; inasmuch as it tended only to oblige him to apply his defence specially and distinctly to each of the distinct and separate articles of the Impeachment, in the only mode in which the respective merits of the charge and of the defence can be accurately compared and determined, or even retained in the memory, and not to limit or restrain him in the form and manner of constructing, explaining, or establishing his defence.

4th. Because, in the case of the Earl of Middlesex, and that of the Earl of Strafford, and other cases of much less magnitude, extent, and variety, than the present, this House has directed the proceedings to be according to the mode now proposed by the Managers on the part of the Commons.

5th. Because, even if no precedent had existed, yet, from the new and distinguishing Circumstances of the present case, it would have been the duty of this House to adopt the only mode of proceeding, which, founded on simplicity, can ensure perspicuity, and obviate

6th. Because

about ten minutes; after which they returned, and took their places in Court.

Mr. Fox then informed their Lordships, that the Managers appointed by the House of Commons to conduct the prosecution, cheerfully submitted to the decision of their Lordships, confident as they were, from a conviction of the goodness of their cause, that let the proceeding take almost any course, most convenient and most advantageous to the prisoner, it was next to impossible that they should not succeed, and fail in their Impeachment. He said, he felt a peculiar pride in standing before that ancient tribunal in the character in which he then had the honour to appear, viz. that of one of the Managers of a prosecution voted by the Representatives of the People, in the name of all the Commons of Great Britain. When he said, he felt a pride on the occasion, no man would suppose he meant any personal vanity, but that proper pride which every British subject, of every degree, must naturally feel, in having so striking an example, that what was called the *Lex et Consuetudo Parliamenti*, the bulwark of the liberties, rights, and privileges, and of every thing that was dear to Englishmen, had provided such a means of bringing criminals of the highest order to public trial, and, if found guilty, to condign punishment. He entered into a discussion of the nature and meaning of the *Lex et Consuetudo Parliamenti* (the law and usage of Parliament), and as-

serted, that it was coeval with our Constitution, and that it was, if rightly considered, of still greater importance than the common law of England, or even the written or statutory laws of the Realm. He explained this by stating, that the *Lex et Consuetudo Parliamenti* was superior to every other species of law, since it was paramount to all—it judged the Judges, and put those upon their trial who could not be otherwise tried at all. Having very elaborately defined what the Law of Parliament was, and by a variety of arguments manifested its serious importance and great utility, he said, notwithstanding these facts were matters of notoriety, and notwithstanding that recourse had been had to the Law of Parliament on a number of critical and pressing occasions, there were some persons who had lately, thought proper to affect an ignorance of the existence of the *Lex et Consuetudo Parliamenti*; and to treat it with no small degree of levity and contempt. Having taken occasion to assign this reason for his illustration of a subject which, he said, could not otherwise have required a syllable from him to explain to their Lordships, who must necessarily be as fully sensible of the meaning and importance of the Law of Parliament as himself, he reminded the Court, that the present Impeachment was brought forward under circumstances that distinguished it from every other Impeachment, and gave it a degree of lustre and dignity that had not belonged to

6th. Because we conceive, that the accepting the proposal made by the Managers would have been no less consonant to good policy than to substantial justice, since by possessing the acknowledged right of preferring their articles as so many successive Impeachments, the Commons have an undoubted power of compelling this House in future virtually to adopt that mode which they now recommend; and if they should ever be driven to stand on this extreme right, jealousies must unavoidably ensue between the two Houses, whose harmony is the vital principle of national prosperity; public justice must be delayed, if not defeated; the innocent might be harassed, and the guilty might escape.

7th. Because many of the reasons upon which a different mode of conducting their prosecution has been imposed upon the Commons, as alledged in the debate upon this subject, appear to us of a still more dangerous and alarming tendency than the measure itself, so far as we cannot hear but with the utmost astonishment and apprehension, that this Supreme Court of Judicature is to be concluded by the instituted rules of the practice of inferior Courts; and that the Law of Parliament, which we have ever considered as recognized and revered by all who respected and understood the laws and the constitution of this country, has neither form, authority, nor even existence; a doctrine which we conceive to strike directly at the root of all parliamentary proceeding by impeachment, and to be equally destructive of the established rights of the Commons, and of the criminal jurisdiction of the Peers, and consequently to tend to the degradation of both Houses of Parliament, to diminish the vigour of public justice, and to subvert the fundamental principles of the constitution.

PORTLAND, DEVONSHIRE, BEDFORD,
WENTWORTH FITZWILLIAM, STAMFORD,
For the 1st, 2d, and 7th reasons,

For the 1st and 2d reasons only,

CARDIFF, DERBY,
LOUGHBOROUGH, CRAVEN.
MANCHESTER.
TOWNSHEND,
HARCOURT,
LEICESTER,

any former prosecution of a similar sort.— Their Lordships would recollect, that most if not all of the ancient Impeachments had been agitated on a sudden, in a moment of party rage and fury, and had been uniformly brought forward by the triumphant side of the House of Commons, viz. by those who took the lead there, and were at the head of the majority: In the present instance, far different had been the origin, far different the complexion and progress of the prosecution. After many years of laborious investigation and enquiry, upon full and mature conviction, in a deliberate manner, and free from heat or indignation, or any impulse of the moment, Charges of High Crimes and Misdemeanors had been exhibited against Warren Hastings, Esq. in the House of Commons, by those who were well known to form a party; weak, indeed, in point of weight or authority compared to that party which was the triumphant one, and which did possess every possible degree of weight and authority in that House. Long used to disputes and contests, the two parties had carried on a political warfare in Parliament with great acrimony for some time; but such was the conviction produced by an investigation of the charges, and a fair discussion of their contents, that to the immortal honour of the House of Commons, and to the glory of the country, both parties met upon the subject, and, forgetting all former animosities, consented to unite in putting a person, who appeared to them to have committed various high crimes and misdemeanors, upon his trial before their Lordships; thereby ma-

nifesting to India, and to all the world, that British justice never forgot nor disregarded the grievances of any description of persons, however distant their situation, who were in any degree entitled to its protection. Mr. Fox dilated on this idea at some length*, and shewed the disinterestedness of the House of Commons collectively, and its Managers in particular, in bringing forward the present Impeachment, since it was not possible for them to derive any benefit or advantage from those whose wrongs they wished to redress, and the author of whose injuries, if he should be so found, they hoped to bring to a just and merited punishment.

Having very fully discussed these particulars, Mr. Fox proceeded to open the charge that he had been ordered to bring forward and explain to their Lordships, viz. the Benares charge.

He began by narrating briefly and perspicuously the history of the district of Benares. It was granted, he observed, by the Vizir Sujah Dowlah, in the year 1764, to Bullwant Sing, to be by him fully retained, and subject only to a tribute of *twenty-two* lacs yearly. On the decease of Bullwant Sing, in the year 1770, the grant was renewed to his son Cheyt Sing, the present Rajah, on the same terms:—it was again confirmed to him, though for what reason is not known, in the year 1773; and to this last grant Mr. Hastings was a witness and guarantee on the part of the East-India Company. In the year 1775, Afoph ul Dowlah, the son and successor of Sujah Dowlah, thought proper to make a demand on the Rajah of an ad-

* Giving way to the overbearing power of exultation, at once involuntary and reasonable, from the avowed pride of his present place and purposes, Mr. Fox exclaimed, with becoming magnanimity—

“It is a pride, however, that is not personal! It is, thank God, most nobly the reverse of all that is sordid, diminutive, equivocal, and base! It reaches, and it decorates, all my friends—all with whom I act—the age, and nation!—Other Impeachments have originated with the party then triumphant in the House of Commons: it is the obvious boast of the present business, to have begun with those too truly not there predominant; and I know not, on which side admiration may most fondly lean—whether, over those whose inventive and arduous career—or those whose ingenuous candour so well and fairly aided it to this EDIFYING CONCLUSION!

“For surely it is grand and edifying indeed, to display the collective vigour of NATIONAL HUMANITY, paramount over all!—to vaunt the dignifying, because useful, influence of two Political Parties uniting, unexpected, in the point of reciprocal disinterestedness!—finely foregoing every fair purpose of allowable self-gratification!—sheathing those arms they both had wielded so ably, to mutual annoyance; and attacking, with a different array what they deemed, whether right or wrong was to be proved, the Common Enemy to Truth and Feeling!

“At such an effort, in the admiring view of surrounding Nations, it were impious, if possible, to be calm!—Indifference were Insensibility—that profaned each sacred influence in Heaven and Earth!—There was no collective virtue superior—in the history of England—in the History of Man! It sprang from MOTIVES, of all others the most high and pure—the GOOD OF OTHERS;—and it flowed to CONSEQUENCES, of all others, the most gratifying and enduring—the well-founded APPROBATION OF OURSELVES!”

vance in the tribute of five lacks. This extortion was firmly resisted by Mr. Bristow, then Resident at the Court of the Vizir, by desire of Mr. Hastings, as guarantee of the late treaty. The Rajah had at that time been received as the friend, and solicited as the ally, of the East-India Company; and on this interference, the Vizir Asoph ul Dowlah thought it advisable to recede from his claim. In the same year, 1775, the sovereignty which the Vizir possessed over the Rajah and his territory, together with the annual tribute, was transferred to the Company. It would be absurd to say, that when the sovereignty was thus transferred, its rights were more enlarged than when they appertained to the original possessor. It would be strange language to hold forth to the Rajah—"When you were tributary to the Vizir, the Company was your friend and guarantee, and your rights were therefore secure;—but in changing your masters, you have lost your defence;—by becoming tributary to the Company, you are left without a Protector—and your rights and your independence have no longer an existence." The absurdity and impropriety of this language was manifest; yet such was the system exemplified in the conduct of Mr. Hastings.

With respect to the question on which so much had been said—whether the Rajah was an independent Prince, or a mere Zemindar or dependant land-holder—Mr. Fox said, he should not trouble their Lordships with a syllable of argument. The former had been asserted on the one side, and as strongly denied on the other. In his opinion, the conduct of Mr. Hastings was equally unjust in both cases: but the truth would shortly appear from the evidence at their bar. Mr. Hastings himself had contributed in some degree to establish the former idea, by moving in Council, which had been carried unanimously, that the Rajah should be invested with a right of Coinage, and with the execution of criminal justice within his territory:—two symbols undoubtedly of sovereign authority. The Rajah, it was understood also, by treaty, was to hold his rights and possessions—"while he paid his tribute regularly—and paid a due obedience to the sovereignty."—This latter part of the sentence would require some explanation, as it had been made, however untenable, a ground of defence by the Governor-General. If the Rajah assisted in the quarrels of the Company—if he did not molest their friends, and suspended all intercourse with their enemies—this would probably be deemed a due obedience; but it unfortunately did not approach to that passive submission which was

required by Mr. Hastings. Neither did the European ideas of sovereignty accord with the definition contained in his *Indian Dictionary*.—By *sovereignty*, says Mr. Hastings in his defence delivered to the Commons—I mean *arbitrary power*! And left his meaning should be misunderstood—lest he should be thought to have spoken of *absolute power*, he adds, "What I mean by arbitrary power is that state where the will of the sovereign is *every thing*, and the rights of the subject—*nothing*!" "I do not in general (said Mr. Fox) approve of either the logic or definitions of Mr. Hastings; but he certainly has the credit of being the first person who has given a full and fair definition of **ARBITRARY POWER**."

But how then was the compact between the Rajah and the Company to be understood? Mr. Hastings, it appeared, was to say to the Rajah, in virtue of his arbitrary power, "Pay me the tribute—observe your obedience—give me whatever sum I shall ask—I then assure you that I will not ask for more!"—But where, in this case, was the compensation, the *quid pro quo*, which should appear in every compact? The Rajah was to pay his tribute, he was to obey every injunction; and in return, if he dared to murmur, he was told by Mr. Hastings—"My will, as a sovereign, is **EVERY THING**; and your rights, as a subject, are **NOTHING**!"—This arbitrary power, however, did not appear to be in contemplation, when in granting the Rajah the privileges of coinage, and of executing criminal justice in his district, Mr. Hastings thought it necessary to reserve by an express clause the right of fining the Rajah if the coin was found to be beneath a certain standard!—Where arbitrary power was vested, such a reservation was superfluous: if the will of the sovereign was every thing, why was the liberty of fining his vassal guarded by such a clause? The exception undoubtedly tended to prove, that in general the right did not exist. Mr. Hastings, however, had assumed a contrary inference in his defence: he alleged, that the exception being made in that instance, proved that the right existed in every other; and inverting the axiom *Exceptio probat regulam*, he contended, that because an exception was made in a particular instance, the same exception should be understood in all cases whatsoever.

There was one circumstance, Mr. Fox said, in this part of the conduct of Mr. Hastings, which, if their Lordships knew his character sufficiently, would strike them with the utmost astonishment. The late Treaty ascertaining the rights of the Rajah of Benares had been made in the year 1775,

and it was absolutely three years before it was broken by Mr. Hastings!!!—If such another instance could be adduced from the whole history of the transactions of the Governor-General in India, Mr. Fox said, he would even consent to let him now escape from punishment. In July 1783, he at length made a demand on the Rajah of an additional sum of five lakhs of rupees, or 10,000*l*. The pretext for this was the report received of the war with France being about to commence. But even supposing this probable necessity to exist, it could not afford a justification of Mr. Hastings, as the Treasury, by his own account, had at that time an overplus of two crores of rupees, or upwards of two millions sterling. Nor could this comparatively trifling sum demanded from the Rajah be meant as the commencement of a general tax on all the dependencies of the Company; as by the confession of Mr. Hastings, there was no other Prince who stood in a similar situation, or on whom such a demand could be made. It had the appearance of harshness, Mr. Fox observed, to assign motives for criminal actions, which were generally presumed; yet he stood unboldered by a complication of proofs to aver, that this extortion had its real source in personal resentment to the Rajah, for having sent his *Fakel* to congratulate Sir John Clavering, when it was rumoured that he was shortly to be raised to the rank of Governor-General. This circumstance would appear natural and insensitive to any person who considered the humiliation to which the Princes of India are reduced; but in the mind of Mr. Hastings was sufficient to excite a rancour, which could not terminate but in the ruin of its object.

If their Lordships, Mr. Fox remarked, had merely a general and popular knowledge of this story, on hearing that the unfortunate Rajah had been deprived of all authority, and exiled from his dominions, they would undoubtedly suppose, that Choyt Sing had refused to pay the fine, and had been thus punished for his contumacy. But was it in that case would have been their astonishment to learn, that he had not only paid it to the last shilling, but had advanced the same sum on a similar requisition in 1779 and 1782, the two preceding years. In each it had been demanded in July, and paid in the October following: and this delay was the sole crime imputed to him by Mr. Hastings, as far as respected this part of their transactions.—With respect to the Extortion, as a violation of compact, and an invasion of the rights of Rajah, Mr. Hastings placed his defence solely on two points—the concurrence of Mr. Francis—and the approbation of

the Court of Directors. In the first of these arguments, if such they could be called, there appeared a specimen of that respect which even the most corrupt are compelled ultimately to pay to the energies of virtue; but it was in vain that Mr. Hastings sought to shelter himself under the concurrence of Mr. Francis, as it would appear in evidence, that the latter only gave his consent to the application, as not knowing but the sum required might come as a voluntary gift from the Rajah, but that at the same time, he had absolutely protested against such a requisition as a right.—On the second plea, the approval of the Directors, it would be idle to dwell at length. Their approbation had been ever certain, when their interests were in any degree promoted. From the general knowledge of this circumstance had originated the bid for suspending the powers of the Court of Directors, which he had once the honour of presenting at their Lordships' bar; and another also which had met a more favourable reception, and was now a part of the law of the land.—But when it was wisely provided that not even the Royal pardon could be pleadable in bar to an impeachment preferred by the Commons, it was absurd to mention the implied approbation of a set of merchants as a plea against their Lordships' process and decision.

The Council, he remarked, had, on a former occasion, recommended to the Rajah of Benares, to keep up a force of 2000 cavalry for their mutual security, which were to be paid for at a stated rate, it taken into the service of the Company. There was no demand made at that time; the term and language were such as should be used between equals, as it was in every respect a *subsidiary* treaty; and his Majesty could, with as much propriety claim the sovereignty of Hesse Cassel, as Mr. Hastings found a claim of arbitrary power on that pretence; and yet the Governor-General, finding all other efforts ineffectual to irritate the Rajah to disobedience, and then, on the contrary, his submission kept pace with every insult, he turned the recommendation into a demand, and required 2000 cavalry to be furnished at the expence of the Rajah, and not at the expence of the Company, as before proposed. This requisition, on the Rajah stating its impossibility, was moderated to 1000*l*. Choyt Sing still declared that he had but 1200, five hundred of which he offered to furnish, and to supply the deficiency with 500 matchlock-men, to be also at his expence.—At the same time, he attempted to conciliate the friendship and protection of Mr. Hastings by a present of 25,000*l*. which the Governor received, as he afterwards suggested, for the use of the Company;

pany; as if such a voluntary gift was to be expected from a man worn out with extortion, if it was not obviously meant as a bribe to purchase a rescue from future oppression.

Yet with all these concessions Mr. Hastings declares, that his patience was exhausted; and "I determined, said he, to turn his crimes to the advantages of the Company, by imposing a heavy fine on his disobedience."—He accordingly makes money a part of criminal jurisprudence, and of criminal punishment. He departs from his character of Chief of the executive Government in India, and takes up that of a criminal Judge; he unites in him the three characters of Judge, of Accuser, and of Witness; and in the delicacy of that novel situation he writes a letter to the Rajah, demanding preemptively a fine of *fifty lacs*, or 500,000*l.* and proceeds himself to Benares, to enforce the requisition!—If the Rajah had withheld the additional tribute required beyond the time it was due, the interest of the sum for that time might have been imposed as a mulct; if he withheld 500 cavalry, the difference of expence between them and matchlock-men, might have been exacted with some appearance of propriety. If his conduct had been disobedient and contumacious, a pecuniary fine might have been imposed with some plea of justice; but that of the last mentioned conduct, his demeanor was as contrite and submissive, as if he had been either guilty or dependent.—[The following letter of Chetty Sing, which is marked by the strongest traits of *fidelity* and *humiliation*, was read by Mr. Grey.]

"I Received your letter delivered to me by Mr. Markham, and I have understood every particular of its contents. Sir, after the arrival of Sheakh Ally Nucky, I observed all the orders which you sent me; and I received the letter which the deceased Sheakh brought me, informing me that every suspicion was now completely removed from your mind, and that I must consider you, as formerly, attentive to me. But I have not experienced from you the same generosities as formerly. I sent you repeatedly letters representing to your consideration my unhappy circumstances; but you never honoured me with any reply. For this reason I sent my Buxoy Suddanund to your presence, enjoining him to represent to you the firmness of my obedience and attachment; to lay before you the particulars of my situation; and to learn the disposition of your mind towards me. He arrived accordingly in your presence, and represented every thing

in a proper manner. I have never deviated in the smallest degree from these professions; and the benefits and civilities which you have honoured me have given me the greatest satisfaction; and I have considered you as the source from which I derived the fulfilment of all my wishes and desires. It is my firm hope, that I may be always favoured with your directions. In this manner I complied, with the utmost readiness, with the order you sent me for the payment of five lacs of rupees on account of the expenses of the war. I sent first one lac of rupees with an answer to your letter. Afterwards, having paid to Mr. Fowke the sum of one lac and seventy thousand rupees, I sent a letter requesting a further allowance of time to enable me to make some preparations. To this I received no reply, it being no time for delay. Notwithstanding this, I was not a moment inattentive to this concern, and as soon as my Buxoy arrived, I paid immediately the remaining part of the sum. The remitting of this to the army did not depend on me: if any delay happened on this head, I could not help it. If besides the payment of the money, the remittance of it also to the army had rested with me, a delay of this kind should not have happened. I have enclosed in this letter a paper of listing the particular sums which have been advanced, with their dates.

"With respect to the horse, you desired me in your letter to inform you of what number I could afford to station with you, and I sent you a particular account of all that were in my service, amounting to 1300 horses, of which several were stationed at distant places; but I received no answer to this. Mr. Markham delivered me an order to prepare 1000 horse. In compliance with your wishes I collected 500 horse, and, as a substitute for the remainder, 500 Bunkandazes, of which I sent you information; and I told Mr. Markham they were ready to go to whatever place they should be sent. No answer however came from you on this head, and I remained astonished at the cause of it. Repeatedly I asked Mr. Markham about an answer to my letter about the horse, but he told me he did not know the reason of no answer having been sent. I remained astonished. With respect to the sepoy, I received first an order to station two of my companies, which I did. I was then desired to give a Tunkaw to the payment of the sepoy, and likewise to pay the Captain; which has been done every month.

* Excepting

‘ Excepting Abdullah Beg and his attendants, none of my people, either dependants or servants, or others in any shape connected with me, have ever gone to Calcutta. My enemies, with a view to my ruin, have made false representations to you. Now that, happily for me, you have yourself arrived at this place, you will be able to ascertain all the circumstances relative to the house, to my people going to Calcutta, and the dates of the receipts of the particular sums above-mentioned. You will then know whether I have amused you with a false representation, or made a just report to you. I have given my Annals most particular injunctions, and have taken a penalty-bond from them, that they shall keep no thieves in their district. What power have they to act otherwise? But if ever a murder or robbery is committed in the country, I have been careful to impale or otherwise punish the culprit. If a person having committed a delinquency should escape to some other place, so as to elude all discovery, in that case I am helpless; but to the utmost of my power I endeavour to fulfil your orders. I have never swerved in the smallest degree from my duty to you. It remains with you to decide on all these matters. I am in every case your slave. What is just I have represented to you. May your prosperity increase.’

Even this letter, Mr. Fox observed, the Governor-General had pronounced to be extremely *offensive*—but if it partook of that quality, it was only offensive in humiliation—and *offensive* in its despondence. Mr. Hastings declared, that it showed the growing spirit of Independence—that it was a recrimination rather than a defence—and that it breathed the language of *defiance*.—I know not, said Mr. Fox, in what tones or language their defiance is announced in *India*; but if this be a defiance, I would merely in the spirit of literary curiosity wish to know, in what terms an *Indian* would declare his submission.

Mr. Hastings, however, was determined to punish. He refused to see the unfortunate Rajah, and actually placed him under an arrest. It was not wholly necessary to recur to Indian manners and customs, to explain the force of this insult.—If we supposed an European Chief, without adverting particularly to his rank, who must be supposed of some consequence, when he paid his Sovereign a tribute of 240,000l. per ann. committed to prison, not only deposed of his immediate

power, but his Government entirely annihilated, some idea might be formed of the business of that day. The rescue of the unfortunate Rajah, with the massacre both of Europeans and Gentoos which followed, were too well known to require a particular description.

On the disproportion of the supposed crime to the actual punishment, Mr. Fox dwelt with much diffuseness, yet with infinite force. The fine of 500,000l. he said, was so much beyond all bounds, that the *finger of the law*, on that occasion, was heavier than the *loins of a King*; and that if such was *British justice*, the miserable Hindoo should pray that it might be exchanged for *Tartarian barbarity*.—Mr. Hastings had lately been compared to a conqueror, whose fame filled the universe:—a character so exalted as to dispute *precedence* with the *second personage* in the kingdom* had assimilated Warren Hastings to Alexander the Great. But if any resemblance were found, it could not be to Alexander when his meries and his victories kept an equal pace;—it could not be to the generous or forgiving conqueror;—the likeness must be meant to Alexander maddened after a debauch; to Alexander in petulant wantonness setting temples on fire—to Alexander when his follies and his crimes had excited horror and contempt sufficient to obscure the radiance of his former glories.—In the first points of the comparison there was not a shade or resemblance; in the latter part of the parallel there was all the justice that could be required.

In an apostrophe the most beautiful that can be imagined, Mr. Fox made the injured Cheyt Sing the utterer of his own complaint to the House.—“ I was, said he, the Sovereign of a fertile country, happy and beloved; I endeavoured to conciliate the friendship of all around me, and as I thought with a success which impressed me with every sensation of felicity.—“ This was the situation of which I boasted; but what is now the reverse?—I am a wretched exile, dependent on the bounty of those who were my enemies, but whose enmities are now buried in their sympathy for my distresses. What have I done to deserve this punishment?”—“ You forget,” replied an Englishman, “ that though a Sovereign Prince at Patna, at Benares you were but a Zemindar; in the latter character you were guilty of disobedience, and are therefore sentenced to a judicial exile.”—“ Alas,” rejoins the wanderer, “ I was ignorant of my crime. Why had I not an instructor to teach me the subtleties of

* Alluding, it is said, to the Chancellor's having disputed precedence in the daily procession to this trial with the Prince of Wales.

" your laws? Though to your power I was ~~" but as an atom in the view of Omnipotence.~~
 " yet surely my intentions should have been regarded, and my ignorance not construed as guilt."—Mr. Fox then observed, that with respect to the massacre which ensued on the injudicious arrest of Cheyt Sing, Mr. Hastings had been solely culpable.—If he went to insist on his demand with the Rajah, knowing that he was *not* aiming at Independence, then was he answerable for his injustice, and for all its consequences. If, to adopt his own defence, he apprehended that there was any such intention, then was he guilty of the highest and most culpable imprudence in being so slightly attended. In either way, a criminality must attach itself, without the smallest possibility of a vindication.

The principal points, however, on which Mr. Fox dwelt as highly criminal, were the demand of the additional five lacks beyond the stated tribute, and the enormous penalty of 500,000*l.* which was demanded, though not received; and to these points, he said, the evidence should principally be directed. He concluded by enforcing very strongly the necessity of punishing the late Governor-General. By imposing a disproportionate punishment, Mr. Hastings had placed venial error on a footing with absolute guilt. Their Lordships should take care to avoid the opposite extreme, and to affix a punishment to the crimes of Mr. Hastings, equal, if possible, to their enormity. They must now become, he said, either the avengers, or the accomplices of his crimes. They could not now plead ignorance of the facts which had been so plainly stated, and which should be so fully proved. The affairs of India had long been hid in a darkness hostile to enquiry, as it was friendly to guilt;—but by the exertions of **ONE MAN**, these clouds had been dissipated.

The ardent virtue, the sublime genius, and that glowing enthusiasm so essential to the operations of both, had, with the application of years, left them nothing of information at present to desire. The eyes of Europe, he reminded their Lordships, was now fixed on their proceedings, and they were looked to for the ruin, or the restoration of the British name. Disgrace attached itself to nations as to individuals. There was a time when the name of a Spaniard was infamous on account of the cruelties practised in their foreign colonies, and not avenged at home; so had we not escaped our share of disgrace; and it rested with the present decision, whether the name of **BRITON**, proud and glorious as it has been, should be doomed to honour or to scorn.—There was also another circumstance to be considered, which was, that when the Spanish infamy was recorded, it was said, that the **GOLD** and **JEWELS** brought from their settlements in South America had been the instruments of mediation for the offenders. Such an imputation might rest on their Lordships, and such a stain was not easily erased. To obviate the insinuation, it was only necessary to recur to their own feelings and their own convictions. The British honour, he would repeat, was in their hands. The Commons had done their duty in bringing to their Bar the person accused, and they were now to decide, whether by his acquittal or punishment, the infamy should rest with the Nation or the Individual.

Mr. Fox concluded * at a quarter past five o'clock, and the Court immediately adjourned †.

EIGHTH DAY.

MONDAY, FEBRUARY 25.

The Hall was this day not so crowded as on former days, as little was expected beside

* For individual passages, separable from their novelty, or their original importance, in idea or diction, Mr. Burke is the mighty master. This speech of Mr. Fox was not so distinguishing. It abounded, however, in distinctions of its own kind, of which the best was vehemence; the worst, unnecessary repetition of preliminary words. The **SARCASTIC REFERENCE** to opinions in another place, was very artfully conveyed. His distinction between the Advocate's duty, and his duty as a Delegate from the Commons, was admirably exact. He said,

" The Advocate may urge whatever may serve his cause, and **INFLUENCE JUDGMENT**
 " The Delegate's allowances are limited;—he should suggest nothing but what he thinks it
 " advisable when judgment is pronounced."

The short mention of Mr. Burke found ready reception with all who heard it:—" If we
 " are no longer in shameful ignorance of India; if India no longer makes us blush in the
 " eyes of Europe; let us know and feel our **OBLIGATIONS** to HIM—whose admirable
 " resources of opinion and affection—whose untiring toil, sublime genius, and high-
 " aspiring honour, raised him up conspicuous among the most beneficent Worthies of
 " Mankind."

† The Commons present this day were above 300. The rest of the auditory were very numerous.

the production of evidence; and discussions not fraught with much entertainment, respecting what was admissible, and the contrary. It was twelve o'clock before the Peers were seated, and proclamation made in the usual form.

Mr. Grey then rose, and in a speech of much ability resumed and enforced the remaining part of the first charge against Mr. Hastings, commencing where Mr. Fox had concluded on Friday last.—He adverted in the first instance to the rights of which the Rajah stood possessed when he became the object of the Chief Governor's indignation. It mattered little, he observed, whether Cheyt Sing at that time was merely a Zemindar, or the tributary, but independent, Sovereign of his District. In the year 1773, when Asoph ul Dowlah had made the arbitrary demand of ten lacs, Mr. Hastings in his letter to Mr. Bristow, the then Resident at Lucknow, had instructed him to declare, that Cheyt Sing was more than a mere Zemindar—that he was the Ally of the Company, and should be protected in his rights! But when the sovereignty over the Rajah was transferred, and when he became the vassal of the Company, vested of course with all those rights; when he had also been indulged with the symbols of Royalty in privilege of the Mint, and of the administration of criminal justice; then Mr. Hastings scorned to look to those rules which he had compelled the Vizier to observe. The rights of the Rajah were trampled upon, and his privileges degraded. The Company had wished to conciliate the attachment of a Sovereign over near two millions of people, and to convert him into a powerful barrier between them and their enemies on that quarter. But what the unexampled knavery of the Company must have effected, was totally destroyed by treachery as unexampled; and the arts of conciliation which policy and humanity would have justified, were neglected for the pursuits of Avarice which destroyed its own purposes, and in the prosecution of a Resentment as absolute as it was unfounded.

His extortion from the Rajah, Mr. Hastings now attempted, when other efforts failed, to justify on the principles of the FEUDAL establishment. It was certain, that by the feudal laws, the vassal was compelled to attend in the wars of his Lord, and to contribute to certain of his necessities. But then the length of his attendance and the *quantum* of his contribution were all strictly and precisely defined. There was not in the feudal, nor in any other law that could be quoted, a single principle to justify a tyrannic licence of exaction, or the vindictive selection of an individual, whose only guilt might be, that

his riches had raised the avarice, or his power excited the envy, of his Lord, and brought down on him an arbitrary punishment.

This extortion had again been attempted to be justified by the imputation of certain crimes said to have been committed. Of the first was—a delay of his remittance of the five lacs required in addition to the stated tribute. On this head, Mr. Grey observed, enough had been said by the Right Hon. Gentleman (Mr. Fox) who had preceded him in the present charge; to that, therefore, he should only add, that the Rajah himself had urged, what was not denied, that the failure in the remission was in some degree owing to the English Resident.—The next charge against the unfortunate Rajah was—the disorders which he had suffered to overrun his territory. But the wisest Police, it will be confessed, with the strictest administration of justice, cannot possibly prevent the offences of individuals: but surely that country could not be looked upon as disorderly or unsafe, when it was a fact asserted and not denied, that those who had acquired fortunes in the more turbulent parts of India, made it a practice to retire to Benares, there to indulge themselves in acknowledged security.—With respect to two other charges imputed to the Rajah,—his withholding the cavalry, and his inclinations to rebel;—the first, if true, was punished without enquiry; and the second was fully refuted, by the small number of attendants taken by Mr. Hastings when he went to punish his delinquency.—[On these topics Mr. Grey dilated with infinite force of reasoning; but as the ground has been in a great degree pre-occupied by those that have preceded the Hon. Gentleman, we forbear to follow him. He was also, at times, exceedingly severe upon Mr. Hastings; but though such strength of expression is undoubtedly justifiable in an Advocate speaking from his conviction, our sense of propriety forbids us to follow the Hon. Gentleman by a literal report.]

There was also, he observed, another species of guilt imputed to the Rajah, which was the supposed concealment of vast treasures. This was indeed a GRIEVOUS FAULT, and grievously had the Rajah been made to answer it. This last was the cause, however, of Mr. Hastings' journey to Benares, which had been productive of such extraordinary events.—He then took up Mr. Hastings' narrative of his journey, "given with a solemnity equal to an oath," which he compared with his defences, and pointed out a variety of strong contradictions. In the one, Mr. Hastings declared, that, previous to his departure, he had communicated his plan of operations to Mr. Anderson and Major Palmer;

mer; in the other, he averred that he acted from the exigency of the moment.—After pointing out a variety of similar instances, he observed that the maxim was not less old than true—*Quos Deus Vult Perdere Prius Dementat*.—The sanity of the intellect was disordered by the vice of the pursuit.—It would have been impossible to follow Mr. Hastings through all his windings, if he had not himself afforded a clue to his transactions. In the midst of his contradictions, he frequently threw a light on the circumstances, which no degree of enquiry could produce.

Mr. Grey then proceeded to state the arrest of the Rajah, with all its circumstantial ignominy. There was a point, he observed, in human nature, beyond which outrage could not be suffered, nor indignity be borne. Yet all this disgrace in the eyes of his people, produced in the Rajah but a repetition of remonstrances, and an added degree of humiliation. He read the very affecting letter from Cheyt Sing, which concludes—“Whatever may be your pleasure, do it with your own hands.—I am your slave.—What occasion can there be for a guard?”—Having mentioned the inefficacy of these applications, he then related the circumstances of the rescue of the Rajah, by the tumultuous force which had crossed the river from Ramnagar, and the slaughter of the British guard, when their countrymen could only arrive in time to witness their expiring friends. For that carnage, he said, and for all the horrid business which succeeded, Mr. Hastings must undoubtedly be answerable. He who sowed the seed, must necessarily be looked to as the author of the harvest. It was the natural effect of oppression to beget resistance; and if the consequences be fatal, the oppressor is undoubtedly guilty.—In relating the escape and subsequent calamities of the Rajah, he remarked with great force, how fatally the transfer of the sovereignty to the Company had operated against his interests. He had passed from the sovereignty of uninformed Barbarism to that of enlightened Religion;—he had exchanged the arbitrary code, as it was decreed, of Timur, for the mild sway of British justice. But what was the consequence? Under the former he had found protection—under the latter his portion was misery!

The next point of criminality which Mr. Grey alleged against Mr. Hastings, was the assault by Major Popham on the fortrets of Bedjeygur, where the wife and mother of the Rajah resided, and the incitements which he had on that occasion held forth to the soldiery to plunder and rapine. In proof of this charge he quoted the very words of the

Governor-General to Major Popham :—“If the reports brought to me are true, your rejecting her offers for any negotiations with her would soon obtain you possession of the fort on your own terms. I apprehend she will contrive to defraud the captors of a considerable part of the booty, by being suffered to retire without examination. “I should be very sorry that your officers and soldiers lost any part of the reward to which they are so well entitled.”

This letter had been defended by Mr. Hastings, merely on a cavilling distinction between a public order and a confidential letter. But that the letter was not confidential, was sufficiently proved, as the next day there was not an officer or private in the detachment who was unacquainted with its contents; and even if that were not the case, there was no military man who would not look on such a letter as a complete justification of whatever he should do in obedience to its intimation. Accordingly, the hint was not lost. The fortrets was surrendered—its unfortunate inhabitants plundered of every thing, in violation of a solemn compact :—yet the soldier had an excuse to plead.—The orders of the Governor-General were not more cruel and barbarous, than they were peremptory and specific. These females of dignified rank were, therefore, stripped of every resource in their want, and of every solace to their eye!—Those who had compared Mr. Hastings to Alexander the Great, would here find their parallel was greatly deficient. Alexander had so comported himself to the wife and mother of Darius, that they scarcely felt their loss;—Mr. Hastings, on the contrary, had so demeaned himself to the wife and mother of Cheyt Sing, that the unfortunate Rajah felt their sufferings as the keenest aggravation of his own.

It was not a little remarkable, Mr. Grey observed, that the ostensible purpose of Mr. Hastings, in his journey to Benares, was to recruit the Company's Treasury; but no sooner did the occasion offer for that purpose in the seizure of the fortrets of Bedjeygur, than the plunder of 250,000. was consigned to the troops. It was true, indeed, that on the representation of the Council, he had attempted to resume it by way of loan. They knew him too well, and this stratagem failed of course. He had then endeavoured to draw resources from a country already exhausted, when he appointed the minor Mempriparain to the empty title of Rajah, fixed the sum of 40 lacs as the annual tribute and named Oussain Sing as the collector of the taxes, under the controul of Mr. Markham. The country was depopulated, and no force could make it productive. It was

in vain that Oufain Sing was imprisoned at the end of the year on account of the deficiencies, and confined until death put an end to his misery. His successor could do no more; and at the end of three years, when Mr. Hastings repeated his visit, desolated towns and ruined villages convinced him of the truth of their reports. No contrast, Mr. Grey observed, could be more strong than that of the description given by Chéyt Sing of the territory of Benares whilst under his government, compared with its situation when under the East-India Company. "My fields," says the Rajah, "are cultivated, my towns and villages full of inhabitants, my country is a garden, and my ryots (husbandmen) are happy. The principal merchants of India, from the security of my government, resort to my capital, and make it their residence. It is the Bank of India, and contains the treasures of the Mahrattas, the Jaiks, the Saiks, the native and European nations. The traveller and the stranger, from one end of my country to the other, lay down their burdens, and sleep in security."—When Mr. Hastings, on the contrary, went through those districts, Famine and Misery stalked hand in hand through uncultivated fields and deserted villages. There were found only the aged and infirm, who were unable to fly; robbers, prepared to kill; and tigers, whose ferocity marked the desolation of the scene.—Such was the contrast between the dominion of the insolent Rajah, and of the unassuming and judicious Mr. Hastings.

Having dwelt at considerable length on this subject, he summed up the whole of this charge with a degree of force which could only be equalled by the modesty of his conclusion.

"I hope not much longer to be troubled—some. I beg indulgence but for few words more."

"If, my Lords, in going over my appointed ground, I have ever been hurried too fast, or carried too far;—if my imagination has, against my wish, seemed at times over-heated as it went, and the verbiage strayed away from the proper aim—let my heart be understood to be involuntary—let my excitements be acknowledged pure. I hope I may with full credit disavow malice. I FANT FOR TRUTH. But I cannot, here, look for it without emotion!"

"Who can, who should be unmoved, when he becomes the spectator of enormi-

ties!—when he is delegated to a sacred service for the detection of guilt!—when he thinks he can trace criminality to its proofs, as certainly as he has sympathy for its consequences!"

"Think, my Lords, if you can, without rational anger, of outrage—exaction—devastation—and death!—the plunder of provinces!—the distress of nations!—all nature blasted by the withering malignity of man!—the helpless and the unoffending—what is useful, and what is honourable—the peasant, and the prince—all prematurely swept together to the grave!"

"His deeds—whoever sins up to deeds like these—his deeds be on his head!—He, by whom the SEEDS OF RUIN are scattered—his is the HARVEST OF INIQUITY—the PENAL RESPONSIBILITY, at each exact tribunal, here and hereafter!"

"Thus, my Lords, you cannot help forming the strong emotions, which your own honour and humanity must feel."

"But there is more to be forgiven—I have much positive imperfection—I have more comparative deficiency to deplore.—I have, alas! taken a talk that is above my strength—and have been forced to follow, *MULTA GEMENS LONGO INTERVALLO*, after abilities such as no strength, I know, CAN KEEP UP WITH!"

"However, thank God, I have tried to DO MY DUTY; and the best of men can do no more! If I fall, perhaps, on an estimate of TALENTS—I hope to rise, without presumption, on the claims of FAIR INTENTION!"

"And, after all, it is not GENIUS—it is not ORATORY—it is not the charm of unexpected throws of language, nor the rapt gaze after new sublimity in ideas—No, my Lords, it is NATURE!—it is TRUTH!—it is from duties well done—from privileges well asserted—from the steady maintenance of every thing right, and from the strong impeachment of all who are wrong, that we can satisfy the claims of existence and responsibility!—decorate ourselves with the only ennobling quality, worth—and transmit the remembrance of OURSELVES, and the very name of OUR COUNTRY, with common honour to our children."

As soon as Mr. Grey had concluded, the Committee of Managers began to adduce their chain of evidence on this important charge.

Mr. Anstruther opened the evidence, and called

Mr. Morton, Secretary to the East-India Company, to prove the terms of the Charter

* Mr. Grey was nearly two hours in delivering his speech; his manner was suited to the occasion; he was fervid, graceful, and impressive. He was well collected, without arrogance;

granted to the Company in 1696. In this Charter all rights belonging to the Royalty are expressly reserved.

Mr. Hudson was next called to prove the appointment of Mr. Hastings to be Governor-General.

Mr. Benson was afterwards called to prove the Act of Parliament of 1774, and likewise the Answer of Mr. Hastings to the Articles of Impeachment in the Commons.—The answer to the charge respecting Benares occupied upwards of an hour; and after the reading was finished,

Mr. Law, on the part of the prisoner, made two objections to the evidence. The first was, to copies of dispatches being read, unless the originals were proved to have been received; and the other, to the Journals of the House of Commons being read in evidence—both which were over-ruled by the Lord Chancellor.

Mr. Anstruther informed their Lordships, that he should not trouble them any longer this day, but he intended to bring further evidence next day.

NINTH DAY,

TUESDAY, FEBRUARY 26.

Mr. Anstruther went on with the evidence on the Benares Charge. There was no personal witness called to give oral testimony. Office documents were adduced on the subject of Mr. Hastings's Commission, and the similar authorities of his predecessors, Mr. Verelst and Lord Clive.—Mr. Cartier had, it seems, no Commission in his appointment at Bengal.

There were also read—the Constitution of a Zemindar—the Constitution of Cheyt Sing*—and various Extracts from Secret Letters to the East-India Directors—Minutes of Council at Calcutta—Communications, Conversations, &c. &c.

In the course of these, some few words

passed between Mr. Law and Mr. Fox. The former having read, contrary to the wishes of the latter, not an Extract from an Instrument, but the Instrument at large, Mr. Fox "imputed this—wherefore, was not visible—to delay; and urged in future instances of similar exactness, that the Counsel should alledge the specific object of each evidence thus additionally adduced;—an allegation which will prevent trifling, by the shame of voluntary falsehood!"

To this short speech, Mr. Law asserted in few words, what few seemed willing to deny, the existence of his right, and the propriety of his exerting it.

After some conversation between those Gentlemen and the Lord Chancellor, it was agreed that no paper should be read at length, unless a sufficient reason was assigned.

At half past four o'clock, the appointment of the Benares Resident being the object, an alteration arose about a letter written by Mr. Hastings, which the Managers were for reading, and the Defendant against.

The date of this letter was 1779—Mr. Markham's appointment to the Residency was 1781. The Chancellor seemed to doubt the relevancy of the letter. Mess. Fox, Anstruther, and Adam, supported it. Mr. Taylor also was going to speak—when, on a motion from Lord Camden, the Lords adjourned—and, contrary to the expectation of many people who waited their return, the Court concluded there†.

On their Lordships' return to the House to decide upon Mr. Law's objection, the Lord Chancellor, Earl Stanhope, the Duke of Norfolk, and Lord Howkyns, severally delivered their sentiments, when it was agreed without a division, "That the evidence offered by the Committee was admissible evidence, and ought to be received."

Ordered a message to the Commons, that the Lords will proceed further upon the trial of Warren Hastings, Esq. on Thursday next.

gance; free in his expression, without any rattle of volubility; firm in his sentiments, with scarcely any disgusting obduracy to the Defendant.

Mr. Grey spoke like a man in earnest. He did not philosophize, agitate, and edify, so powerfully as Mr. Burke; but he shewed some reading, and some abstract reflection. He not only declaimed, but his speech had, what is less attainable by so young a man, much good arrangement and lucid order.

* When a letter to Cheyt Sing was reading by the Clerk, Lord Stormont, with much sagacity, enquired, "if there was any title in the Address, or any Address at the conclusion of the page?" The answer stated—"there was none."

The Archbishop of York, on the word "independence" occurring in one of the documents relative to the Zemindar, asked the import of the word, and "whether it referred to the India Company, or to Local Sovereignty?" The Chancellor bore testimony to the propriety and importance of the question; but said, the consideration at present was informal.

† But very few of the Commons, not above 20 or 30, were present through the day.—There was at first rather a full auditory; but they soon quitted the Hall.

TENTH DAY.

THURSDAY, FEBRUARY 28.

The Court met at twelve o'clock, when the Lord Chancellor informed the Managers of the resolution of the House respecting the letter to be admitted in evidence.

The Clerks also passed through a various mass of other written evidence—from the Consultations of the Calcutta Council—their Letters to and from the Company, public and secret—some of which, had the meaning been to have kept it secret still, could not have been better read.

Two of the Clerks from the India House were at the Bar with their Office Books—and both, but particularly the Accountant, gave a short testimony, in a mode that was very sensible and well collected.

The evidence adduced, chiefly went to the Benares Residency, and the circumstances in the appointment, of Mr. Fowke and Mr. Markham—the Stipends—the Cavalry—and the Subsidy in lieu.

The eloquent and convincing Account of the Expedition to Benares, stated to be written by Mr. Hastings, was the last paper before the Court. Much of it was read, till the Clerk could see to read no longer;—at near half after five o'clock, therefore, the Court adjourned*.

Besides what has been mentioned, there was little said or done. Lord Stanhope spoke a few words, and Lord Stormont, both, very much in point.

ELEVENTH DAY.

FRIDAY, FEBRUARY 29.

The business on this day commenced rather sooner than usual. At eleven o'clock the Peers were seated, and the Court had passed through the general forms.

The reading of the necessary documents was then resumed; the letters of Mr. Hastings, and the Rajah Cheyt Sing—the Mi-

nutes of the Secret Council—the correspondence of the Court of Directors, and variety of other papers were read which made matter of evidence on the present charge. On producing Mr. Hastings' Narrative of the Expedition to Benares, Mr. Adam submitted a proposition to the Court—that as they had determined that the business of each day should be printed for the use of their Lordships, it would tend much to expedition, without subtracting from the justice of their proceedings, if the necessary extracts from the Narrative were only marked for the purpose of being printed, without being read at length in the present instance.

To this proposal no objection was made until Mr. Adam had nearly gone through the whole statement of the extracts which were intended to be printed.

Earl Stanhope then rose suddenly and said, that in making the motion in their Lordships Chamber of Parliament, for the printing of the papers of each day, it was not his intention that any should be printed but such as had been previously read. In his opinion, the ends of substantial justice would not be answered by passing over the papers in the manner now proposed.

This objection brought on a variety of observations from the Lord Chancellor, Earls Camden, Fitzwilliam, and several other Peers; but Lord Stanhope adhering to his original opinion, it was agreed, that to avoid the inconvenience of a temporary adjournment, the extracts should be read at length according to his desire†.

When these were concluded, a variety of accounts were produced, tending to shew the state of the establishment in Benares, after the expulsion of Cheyt Sing, and of the extravagance of the annual tribute demanded by Mr. Hastings of FORTY-NINE lacs, when the country, in its most prosperous state, had never produced more than FORTY-FOUR, and

* The Hall this day had not much resort—there being but very few Members of the House of Commons present—never more than twenty, and latterly but three—and of Peers, from seven, till they dropped to three also.

† The Papers read were different Minutes of Proceedings with Cheyt Sing—of the country laid waste—the Bengal dispatches—and then the appointment of Mr. William Markham to the Residency of Benares.

On this subject, the reasons of Mr. Hastings for this appointment were read. If the grounds of the appointment were creditable to Mr. Markham, the reasons given by Mr. Hastings were still more so, to his own understanding, and were enforced with all the strength of fine writing.

Mr. Fowke was removed—but the honourable manner in which that removal was expressed by Mr. Hastings, was more flattering than the office itself. His salary too was continued for three months—amounting to 3000 rupees.

The conclusion of the written evidence consisted of the detail of the prize money—less from Colonel Champion—and a picture, before given from Mr. Hastings, of the devastation of the country of Benares,

these only under the pressure of severe exact-
tion.

The written evidence being concluded, the
Managers proceeded to enforce it in particular
parts by oral testimony.

Mr. Adam connected and explained the
above evidence.

At half past three, the first evidence called
was

J. STABLES, Esq.

Examined by Mr. ADAM.

This gentleman was second in Council.—
Being sworn, he stated that he went to India
in 1759, and that in 1764 he was an officer
in the army sent to Benares; that he had fre-
quent opportunities of seeing Bulwant Sing;
that he looked upon him as a very consider-
able person, and that in the end of the year
1763, or beginning of 1764, a negotiation
was set on foot to detach him from the Vi-
zier, to whom he was tributary, and to en-
gage him in the English interest. That the
country of Benares was full of people, and in
high cultivation; that Bulwant Sing was
treated by his subjects with marks of affec-
tion very different from the attention shewn
to a mere Aumeel or Collector; that Be-
nares was the residence of a wealthy commu-
nity of the religious order; and that the army
in which he served were not permitted to en-
ter the place.

He was cross-examined by Mr. Plummer.

The next witness called by the Managers
was

FOX CALCRAFT, Esq.

Examined by Mr. GRAY.

Mr. Calcraft stated that he was Aid du
Camp to Major Popham, in the detachment
that took the Fort of Bedjeygur;—that the
treasures found in the Fort were divided as
plunder among the army, which he under-
stood to be done under the authority of a let-
ter from Mr. Hastings; that the plunder was
divided the day after the seizure, and amount-
ed to 25 lacks of rupees; that each sepoy had
100 rupees; that he was dispatched with the
intelligence to Mr. Hastings, then at Chunar,
40 or 50 miles distant, who expressed vel-
ement dissatisfaction at the division of the
plunder among the soldiery at a time when
the Company wanted the money; that he
represented to Mr. Hastings the letter he had
written to Major Popham, as giving an au-
thority to the division.—This, Mr. Hastings
denied, said the letter was private, and gave
no authority; that in all the proceedings of
the war every officer had submitted to his
advice, and that it was wrong to proceed to
the division, which he called a scramble on
account of its precipitancy, without his con-
currence, he being so near. That in answer
to this, he said to Mr. Hastings, that the

letter could not be a private one; as it con-
tained public matter; and that the cause of
the precipitancy was, that in the case of the
Rohillas the troops had never received their
booty. Mr. Hastings asked if it would be
possible to make the officers refund, and that
if they would do so he would use his in-
fluence with the Board to procure for them
the money afterwards. This he told him he
thought impossible, as it was already too
generally dissipated. He said he brought a
sword as a present from the officers to Mr.
Hastings, and some ornamental plate to Mrs.
Hastings, but he knew not whether they ul-
timately remained with them, as he delivered
them to Mr. Markham; he believed they
never did receive them, but he never heard
what became of them.

The above gentleman, extraordinary as it
may seem, was brought by the Prosecutors.
His ideas and account of the general antipa-
thy to REFUNDING, occasioned much en-
tertainment. The Chancellor could not help
smiling.

Mr. Calcraft was cross-examined by Mr.
Dallas.

The third witness called was

Mr. BENN.

Examined by Mr. ANSTRUTHER.

He deposed, that Durbijah Sing was con-
fined in a house belonging to the Rajah of
Benares; that he had a garden of six acres to
walk in; that all the guards were on the out-
side, and walked around it. That DISEASE
—but which he did not further explain—
was the cause of his death; that it was not
occasioned by any cruelty. That he could
not recollect that the New Minister, Jagger
Deo Sen, or any person for him, had ever
complained to the British officers that the
revenue was insufficient to the demands; and
that in particular, he could not procure the
six lacks destined for the maintenance of the
Rajah. That the arrears of his collection of
the revenues were submitted to arbitration.
That that arbitrator was Ali Efram Cawn,
against whom no word of blame had ever
been uttered by any one. That one lack,
50,000 rupees, were awarded to be due from
Durbijah Sing. That in the years 83, 84,
85, and 86, the country of Benares was in
high cultivation, and well peopled.

As this gentleman was proceeding in his
evidence, which did not seem to satisfy the
Managers, a question was proposed, tending
to convey, that he gave another account before
the House of Commons.

Mr. Law took an objection to this ques-
tion, as being contrary to the practice of the
Courts for prosecutors to arraign the credi-
bility of the witnesses they had themselves
called; nor was it proper that they should go

into

into a new enquiry after the cross-examination was concluded.

Mrs Fox said the learned gentleman was mistaken as to the practice of that High Court. In the case of Lord Lovat, where a witness was apparently unwilling to answer a question to the extent which the Managers knew he could answer it, they claimed the right, and they were permitted to refresh his memory by asking him what he said before.

Mr. Adam contended that the practice of the Courts below was invariably to allow of leading questions in the case of unwilling witnesses, which it was the misfortune of this prosecution to have; for the witnesses whom they had to adduce in the course of the trial stood in such a relation to the prisoner, as would make it extremely difficult for the Counsel to come at the truth, if the Managers were deprived of the means of extracting it, which was invariably pursued in the Courts.

The question being put by the Court, and answered in the affirmative, Mr. Anstuther read from the minutes a question and answer, purporting that heavy complaints were made by the Minister, that the revenues were not sufficiently abundant—and he desired to know whether this question was not put, and this answer given.

Mr. Law renewed his objection, and a pretty long debate took place, which occupied the remainder of the day, and prevented the Court from concluding on this charge.

Mr. Law said, it was contrary to all precedent in every Court of Judicature for prosecutors first to examine their witnesses, to suffer them to be cross-examined, and then finding the evidence not exactly what they expected, or what they wished it to be—to make an attempt to blast the character of their own witnesses, and to take from them all credibility. This was a thing unheard of in judicature, and he trusted that their Lordships would not allow of a practice so new and preposterous. He stated the matter in various ways, and argued that it was fundamentally improper.

Mr. Plummer rose to answer Mr. Adam—which he did in very strong and powerful terms. He requested the Court to advert to the novelty of this attempt—an attempt, he believed, before *untrial* in any Court of Judicature whatever. A party call their own witness—they examine him in their own way—he is then cross-examined by the other party; and when the Prosecutors find that he does not turn out the evidence they wish—they endeavour to destroy the testimony they have themselves brought, and impeach his credibility. The precedent was indeed now 1 and whether would it lead? Every gentleman

brought upon this, or after this, upon any other cause, would find his character taken away, his veracity called in question, and his oath disputed, because he did not answer the expectation of those who brought him. He believed more honourable witnesses, or names more respectable, were not likely to be called on any future trial: and he trusted their Lordships would not be told by the Managers, however high they might hold themselves, that "*you shall make a rule for us*. Ours is a peculiar case—we are to force out truth, and by violence must we come at it. But, my Lords, concluded Mr. Plummer—if to do a little right, you are to do a great wrong—consider what a precedent you establish; what high roads you lay open to error. If you determine this attempt in the Managers to be law, you argue against all other cases that we know of; and if you make a new Rule, as they would have you—future Courts in their turn, will leave or adopt it at their pleasure."

Mr. Fox said, the two learned Gentlemen had spoken very ingeniously; but it unfortunately happened, that they had totally and completely misrepresented or misunderstood the case. They had made the whole of their argument on the assumed fact, that the Managers were desirous to blast the characters of the witness. No such thing was intended nor tried. He revolted at the idea of impeaching the characters of the witnesses he brought to the bar. The Managers felt that they were responsible for their conduct, and they distained to bring witnesses to the bar of that high tribunal, whom they previously knew to be improper, and unfit to be credited. It so happened, that, solicitous only of producing truth, they had endeavoured to do that which every Court invariably practised in the case of an adverse witness. They had endeavoured to refresh his memory by a leading question. Now, though on this, as well as on all questions, he must enter his protest against the idea, that that High Court was to be guided by the practice of the Courts below; contending as he did, that their Lordships were to be guided by those rules only of which he acknowledged the propriety; yet still he was ready to put his ignorance against the legal knowledge of the learned Council, and to agree with them, that it was the constant practice of the Courts to suffer leading questions to be put to unwilling witnesses, and that this was not considered as an impeachment of their credibility. Even in cases of life and death, it was common to say to a witness, This was not what you said before the Magistrate, &c.; and that such refreshment of recollection was proper, and contributed to the production of truth. This was all that they denied in this instance. The witness might have improved his knowledge by

by exercising his memory on the point since his examination before the Committee, and it would be no attack on his character, if on a more precise recollection his evidence might be different now from what it was then.

Mr. Michael Angelo Taylor and Mr. Burke concluded the debate with a few words; and it being past six o'clock, and quite dark, the Lords adjourned to their own Chamber, where they resolved to put a question on the point in dispute to the Judges; and adjourned the Court* to Thursday the 10th of April.

TWELFTH DAY.

THURSDAY, APRIL 10.

About half after twelve o'clock the Court met, and being opened with the usual solemnities, and the prisoner brought to the bar,

The Lord Chancellor informed the Hon. the Managers for the House of Commons, that he was directed by their Lordships to inform them, that "when a witness, produced and examined, disclaimed all knowledge of any matter so interrogated, it is not competent for the Managers to pursue such examination by proposing a question, containing the particulars of an answer supposed to have been made by such witness in any other place, and demanding of him whether the particulars so suggested were not the answer he had made." Therefore he informed the Managers, that the last question put to Mr. Benn was incompetent.

Mr. Fox requested that they might be permitted to withdraw, and accordingly the Managers withdrew for some time.

On their return Mr. Fox addressed the Court in a short speech, of which the following is the purport:

The Hon. Gentleman said, it was with great concern that he had to inform their Lordships, that the Managers could not acquiesce in the resolution which the noble and learned Lord had communicated to them, without expressing their direct and positive dissent from the principle upon which it was made. Bound as they were to prosecute the charges exhibited against Warren Hastings with vigour, they should in consequence of this resolution have felt it their duty to return to the House of Commons, and refer the decision to them; but that solicitous as they were of prosecuting the charges with dispatch as well as vigour, they had resolved for the time to acquiesce, but to acquiesce under a solemn protest, which he now made. In acquiescing, however, they begged leave to say, that they should maintain their claim

to submit the same sort of question, if in the further prosecution of the charges it should be found necessary to the consideration of their Lordships, and they should also submit it to their deliberation in another way. They felt it to be of the most serious importance, not so much on account of the particular question on which the resolution had been made, as it might apply equally to other questions of more interest, and they did not know but that such restraint might seriously affect the course of public justice. It was to be observed, that trial by impeachment must necessarily in its nature be directed only against men of considerable rank and influence; and it was therefore to be expected that the witnesses to be examined would be involuntary witnesses—men who had either been accomplices in the crimes, or who owed gratitude to the prisoner, and that it would require all the powers of the Court to extract the truth, which it was the common wish and duty both of the prosecutors and the Court to obtain. Men of great consideration, when under trial, would naturally possess proportionate influence—the influence both of intimidation and of hope—and, what was still more likely to be the case, the influence of gratitude. This was particularly applicable to the present trial. The prisoner, by the nature of his situation, had necessarily attached to his interests many whom he had protected by his power, and raised to opulence by his favour. Many persons were involved in the crimes with which he stood charged by the House of Commons, and who, by their situations, were the best able to give information; and therefore, in the examination of all such persons, it became essential to the ends of public justice, that questions of the nature of that upon which the resolution had been made should be countenanced.—They acquiesced the more readily for the time in the decision, from the confidence which they had in their Lordships love of and zeal for justice, that when they came to reflect that such questions were indispensable, they would be countenanced by that High Court. They were more ready also to acquiesce, because, though by their resolution it might be denied to the Managers for the Commons to put such questions, a right, however, which they would never give up, they were sensible that it could not possibly be denied to the prisoner, or to the Counsel for the prisoner, to put such questions if they should think them necessary; and because they knew also, that it must be in the power of the Court, whose duty and whose anxious wish they knew it

* The Commons this day rose from twenty to sixty. The thermometer stood there at the highest.

must be to search for the truth of every part of the body of matter brought before them in the charges, to ask such questions as occurred to them to be necessary of this kind. For these reasons, and also from an earnest desire of proceeding with all possible dispatch and vigour, they had resolved to submit for the moment, that the question of right should be waved; at the same time they could not help expressing their surprise, that their Lordships, who in the outset had declared that in this High Court they were to be directed and governed by the forms and practice of the Courts below, should in this particular instance think it necessary or expedient to depart from the known, constant, and uniform practice of every inferior Court of Law in the kingdom.

On this Mr. Benn was called again to the Bar, on his further examination.

Mr. BENN.

Examined by Mr. Fox.

Mr. Benn stated, that he had not seen his deposition since he gave it in the House of Commons; that he wished to be indulged with a sight of it, to refresh his memory.—This was permitted to him.—He then went into comments and explanations of it. He said, his communications with the Rajah were not official: that, of course, the Rajah never complained to him of ill-treatment. That he was only assistant to the Resident of Benares, appointed in January 1781. That the confinement of Durbejah Sing was in two ways:—first, the guard was placed at the outside of the garden; secondly, on the inside, and some in the house; but that he sustained no other hardship, than in being for two days *deprived of his boucca*, viz. *smoking*. Did not know whether his confinement came from Government at large, or the Governor-General. That his papers were seized—his jaghire sequestered. That it was generally understood there was a deficiency in his accounts; and that Culbully Ben, a farmer, had paid him monies, for which he had not accounted.

Mr. BURKE here took up the examination.

That the country of Benares paid as much as it could well afford to Government; that it would not “take care of itself,” as Mr. Burke demanded, but required some attention. That the article of Saltpetre, in that country, was of the nature of a Royalty in this, and was generally in the hands of some great Zemindar. That the Opium produced about 470 chests in a year.

Mr. Burke attempted to deduce from his examination, that the resources of the country were not equal to the sum demanded annually.

Cross-examined by Mr. LAW.

That the great resource of the country was—ITS RELIGION: that a number of Pilgrims came thence, and expended large sums in travelling and gifts. To these the Saltpetre and Opium were to be added. And concluded by saying, that the money, 2080 lacks of rupees, awarded to Government by Aly Ebraim Cawn, was never paid. That another improvement had been proposed by Mr. Hastings—the cultivation of sugar—which it was proved grew there with success.

Mr. Adam then rose, to produce some written evidence:—“Country Correspondence, and Minutes of the Secret Committee:”—and secret indeed they were, as they consisted of one continued string of Indian names, whose sounds occasionally excited the wonder of many of the ladies. They were read with great perference and astonishing gravity by the Clerk.

These being finished, the last evidence in support of the charge was called in.

Colonel GARDNER.

Examined by Mr. GREY.

He deposed, that he knew the country of Benares perfectly. That property was well protected there. One only instance of cruelty he knew—that of a Cadet being wounded by the people of the country. That he had played at Chefs with Cheyt Sing, and walked with him in his garden, but never saw any violence in his temper. That he thought Mr. Hastings might have been cut off, had the Rajah wished it. That when Cheyt Sing was arrested, the insurrection seemed of the instant, and not premeditated. Thought that money might have been obtained from him without bloodshed. That an indirect application had been made to Mr. Markham, who wondered “how intercession could be made for a murderer.” Observed no personal animosity on the part of Mr. Hastings against him; but thought he was thus suddenly arrested, for carrying on a Secret Correspondence with the enemy. That arresting was certainly an insult, as it was in all countries; and imagined it might have been done without.

Cross-examined by Mr. PLUMMER.

Thought much of the violence proceeded from Cheyt Sing's brother, Sujah Sing, who commanded almost entirely;—a man of much violence of disposition.—This evidence was finished by being asked—that as he had declared his opinion of many persons in the course of his evidence—What his opinion was of Mr. Hastings? To which he replied, That a more amiable private character he had never known, than that

that borne by Mr. Hastings; and it was so universally acknowledged*.

THIRTEENTH DAY.

FRIDAY, APRIL 11.

This day the Court being assembled, Mr. Anstruther began to sum up the whole of the evidence on the first charge. He entered very fully, in a speech of three hours and a half in length, into the history of the transactions between Mr. Hastings and the Rajah of Benares; but unless we were at liberty to follow him through the whole of the detail, it would be impossible for us to convey any idea of the happiness with which he elucidated the whole of this complicated business. From the first supposed PERSONAL affront offered to Mr. Hastings by the Rajah, to the exile of that unfortunate Prince, and the confinement and death of Doorgbidjee Sing, he was highly luminous and impressive. In adverting to the rights of Bulwant Sing, and his son Cheyt Sing, as discriminated by the Governor-General, Mr. Anstruther was peculiarly happy. The former was a Zemindar, according to Mr. Hastings, because he paid tribute:—this had been made by that gentleman the specific distinction between a Zemindar, or landholder, and an Aumeel, or collector; yet when his indignation was roused against Cheyt Sing, his payment of tribute was the very reason assigned why he should not be regarded as a Zemindar!

Mr. Anstruther then took notice of the different arguments which had fallen from the advocates of Mr. Hastings, in reply to the particulars of this charge. It had been urged, that the whole of his conduct in India, though repugnant, perhaps, to particular statutes, was strictly consonant to the uniform practice in Asia. "Would it have been borne," asked Mr. Anstruther, "in the ROMAN government, even at its most degenerate period, in a Provincial Governor, on his trial for oppression, to have protested against that system of jurisprudence which he had violated—to have exclaimed, 'Try me not by your mild institutions—try me not by the code of Justinian—for these accord not with the system I have pursued;—try me, on the contrary, by the practices of a Nero and a Caligula, and by those shall my journal of desolation

"be fully justified."—Yet this was precisely held forth by Mr. Hastings—"Try me not," said he, "by the British laws; subject me not to the code of Asiatic justice; but try me by the practices of Cossim Ali Cawn and Aliverdi Cawn, for their perfidy of oppression will find an ample store of precedent!"

He concluded by assuring their Lordships, that no pains had been spared by the Committee to bring forward those parts only of the evidence on this charge, which went directly to prove those facts on which the charge had been originally founded.

Mr. Benn and Colonel Gardner were then called in, and asked a few questions by the Earl of Suffolk, respecting chiefly the first insults offered to the Rajah of Benares, at the time of his arrest, and the treatment of Doorgbidjee Sing during the time of his imprisonment. To a question, "Whether, according to the customs of the nation, it was not a severe insult to deprive Doorgbidjee whilst confined of his *boucca*, or tobacco-pipe?" Mr. Benn replied, "That it was not more than taking from an English gentleman his *snuff-box*."

Mr. Burke then said, that before the business was finally submitted to the justice of their Lordships, he found it necessary to trouble their Lordships with a few words on the nature of the evidence which had been produced. It was to be recollected, that some of those men who had been called to their bar had been the instruments of that tyranny which was now arraigned. Those who were deputed to oppress, were therefore to be treated with caution, when they spoke of the measure of the oppression. It was easily to be seen, that those who had insisted the injustice, would not use the harshest terms when speaking of its measure and its rate. Of this nature appeared to be the evidence of that person who had spoken of the privation of the *boucca*, during the imprisonment of Doorgbidjee Sing. To some of their Lordships, happy in large fortunes, and nursed in the lap of indolence, such circumstances might appear trifling; but to the wretched prisoner, deprived of every comfort, the smallest alleviation of his misery was of importance, and left a *vacuum* in the forlorn residue of his enjoyments. It was equal in that case what the object might be

* In the course of the day various Lords put different questions—Lords Fitzwilliam, Derby, Kinnaird, Stanhope, Portchester, Coventry, and others.

The Prince of Wales, the Duke of York, and the Dukes of Gloucester and Cumberland, were all present.

The Commons were few in number indeed—less than on any former occasion; and the audience lessened so continually from time to time, that at last scarcely any hearers but those who were obliged to hear were left in the Court.

even a snuff-box or a tobacco-box became matters of moment. Their Lordships might have heard of a prisoner in the Bastille, whose solitude and misery found a respite in the play of a *spider*, which he had trained in some degree of familiarity. In that single enjoyment he bore his sorrows without repining; but the circumstance being discovered by his keeper, that inhumanity which crushed the *spider*, plunged the other victim into a despair which terminated his existence.

With respect to the treatment of Cheyt Sing, on his arrest, it was only necessary, Mr. Burke observed, to cast a brief retrospect to the circumstances. The Rajah had been oppressed, until he could find no refuge, and degraded in the eyes of his people, beyond the reach of human consolation.—He had returned to his closet, to address himself to the Divinity—the Common Father of All. He was there suffered to be insulted by a *Chudbar*, a wretch of the meanest class. Those who had permitted this deed, had forgotten the maxim, *Quodres est sacra miser*.—If they had not remembered the reverence due to a Prince and Priest, they should have known that there was a sacredness in misery, and have respected his wretchedness, even when they overlooked his rank. In revenging this insult, his subjects had merely done their duty. They had done what every British subject, it was to be hoped, would do, if they saw their Sovereign so degraded. To say the Rajah, who was a Commander, a Prince, should not be disgraced, from being arrested by one who had formerly been his servant, and at the hour of his devotions, was ridiculous. And for what reason? Why, because he was not a *Bramin*—or a Priest. A very admirable reason indeed!—"Suppose, (said the orator, and with an audacity that was felicitous)—suppose a Lord Chancellor himself—*should be found at his devotions*, the keeper of his Majesty's conscience—and great as he must be—suppose he should be thus taken away, would it remove the indignity that he was not a *Bishop*? No:—the Lord Chancellor would know, and feel the disgrace: He would think of the devotion he had lost, and he would not care whether he was a Bishop or no."

The whole Court was in a roar of laughter at this novel sight. The Lord Chancellor, however, kept his gravity.

This last speech more than compensated for the *tedium* of the day, which certainly had been—"carbones notandus," amongst the coldest.

The Hall had but a thin attendance.

The Court broke up at half past four

FOURTEENTH DAY.

TUESDAY, APRIL 15.

'SECOND CHARGE;

RELATIVE TO

THE BEGUMS, or PRINCESSES of OUDE.

The Court being seated,

Mr. Adam informed their Lordships, that he was commanded by the Commons to lay before them the particulars of the second article of impeachment presented against Warren Hastings, Esq. Conscious as he was of his want of abilities to discharge so arduous a task, he had not presumed to solicit it; it was assigned to him by those whose commands it was his duty to obey; and though so splendid a display of talents had been made elsewhere upon the same subject, as might frighten any man from pursuing it, yet relying upon the indulgence of the Court, he would venture, in obedience to his orders, to enter upon the subject, in treating of which he had the goodness of his cause and his zeal only to support him.

The various articles of the second charge might be reduced under nine or ten heads, containing as many general positions, and the grounds of allegations of guilt against the prisoner.—First, that Oude was a great, rich, and flourishing country—that the Begums, the mother and grandmother of the reigning Nabob of Oude, were ladies of high birth and quality—that they were legally in possession of great estates, both real and personal—that the property of them was legally vested in these Princesses—that the East-India Company had guaranteed the possession of them—that it was the bounden duty of Mr. Hastings to maintain the Princesses in the undisturbed possession of their property so guaranteed—that, on the contrary, he had invaded it, and even compelled their own nearest relation to spoil them of it—that, with his knowledge, the Princesses and their families were treated with the greatest indignity, and reduced to the greatest distress—that, for the purpose of giving a colour to his own unwarrantable proceedings, he had, by means of affidavits taken by the Chief Judge of India, Sir Elijah Impey, to the great discredit of justice, and of his situation, slandered the Begums, as the abettors of the rebellion of Cheyt Sing, &c.—and finally, his motives in the whole of the proceedings relative to the country of Oude, were founded in avarice and corruption.

Upon these different heads, he begged leave to state to their Lordships the different observations that occurred to him, and which, he trusted, would place the guilt of the prisoner in such a point of view, that
judges

judges of infinitely less discernment than their Lordships possessed could not but be struck with it.

That Oude was a country of considerable extent, would appear from this fact, with which their Lordships were well acquainted; that it was in length 360 miles, and in breadth 180; so that it was nearly as long as England, and as broad as this kingdom, from the isle of Anglesea to the mouth of the Humber: it exceeded Ireland in length by 70 miles, and was rather broader than any part of that island. It was wealthy, because it produced in some parts various articles for trade and manufactures, which were carried on to a very considerable extent; and in other parts it was rich in tillage. Before its connexion with the East-India Company, it was able to defray the expences of all its establishments, without letting any run into arrear; and the size of those establishments might be collected from this, that when a reduction in the army took place in Oude, the number of men still kept in pay amounted to 36,000 rank and file.

Thus was the country rich and flourishing, while the Provinces were fewer in number than they afterwards became by the accession of Douab, and the conquest of Rohilcund, or the country of the Rohillas; but this increase of dominion did not bring increase of wealth to the Nabob of Oude; on the contrary, his finances fell into disorder, he became astonishingly embarrassed, and his country was ruined.

The origin of his connexion with the English was the Rohilla war. That war the House of Commons in its wisdom had not thought proper to make the ground of a charge against the prisoner, and therefore he would not urge it against him as such: but he must make mention of it, for the purpose of shewing the origin of our connexion with the Nabob Vizier. When Sujah ul Dowlah formed the design of adding Rohilcund to his dominion, he entered into a treaty with Mr. Hastings for the avowed purpose of *extinguishing* the Rohillas; and the price of our assistance was stipulated at 40 lacks of rupees, or 400,000l. The sun that saw the beginning and completion of this infamous bargain had risen in *avarice*; its meridian was in *cruelty*, and its setting in *blood*. From such a connexion nothing good could be expected; and, accordingly, from that day forward the Vizier began to run into debts, which daily increased, but were never suffered to diminish. His embarrassment disabled him from fulfilling his pecuniary engagements with the English, and gave them a pretence for meddling with the internal government of his country, and reducing him, as it were, to a cypher. Such was the

actual state of that Prince and his territory.

The Princesses of Oude, as he had stated before, were ladies of high birth and quality. The Elder Begum, or grandmother of the reigning Prince, was the daughter of a person of ancient and illustrious lineage, who was of sufficient power and consequence to be able to dispute the high office of Vizier of the Mogul empire with the Nizam of the Carnatic, and was at last honoured by the Great Mogul with the title and office of *Captain General of the Empire*. Her father gave her in marriage to Sufter Jung, a man of very noble birth, who left to his son Sujah ul Dowlah the dignity of Vizier, and from him it descended to Asoph ul Dowlah, Sujah's son, who now reigns over the territories of Oude. The younger Begum, or Princess's mother, was not of birth so illustrious as the former, but still she was nobly born, and became the wife of Sujah ul Dowlah, and bore to him the reigning Nabob Vizier.—From this short history it appeared, that these ladies were of high rank, and intitled to great respect, and to great establishments. They accordingly enjoyed both,—That the estates which they possessed belonged to them in *propriety*, and were not held by them in trust, should, Mr. Adam said, be proved to the entire satisfaction of their Lordships. The bare *possession* of the personal estates or treasures which they had in their palaces, was a proof of the propriety; for as those treasures were deposited in the Zenana, or palace sacred to the residence of the ladies of the Court, it was impossible that, according to the law of the country, any human creature of the *male* kind, except a husband, son, or brother, could set his foot within the gates of it: No compulsory process, therefore, could be served or executed in the Zenana, and no one could enter it to take away the treasure. Would not, then, their Lordships admit, that the treasure which no one could take from them was really the property of the Princesses? But the proof of the property did not rest upon these points only, strong as it was. By the laws of the Koran, the Nabob was not restrained from giving estates, both real and personal, in full property, to his mother and grandmother; and what one Nabob had given, another was pleased to confirm.—The younger Princess had lent her son 26 lacks of rupees, for which he gave her his bonds: here was *EVIDENTIA REI* that the money so lent was not the property of the borrower, but of the lender; for no man borrows his own money, and binds himself to repay it. The Nabob's affairs growing still more and more embarrassed, that Prince was still pressing his mother for money, and laying

laying claim to part of her treasures, as the property of the crown, which his deceased father could not will away. His mother, to relieve his distresses, and to secure to herself the peaceable enjoyment of a part, at least, of her fortune, entered into a treaty with her son, to which the English were parties and guaranties; for without their guarantee she would conclude nothing. By this treaty she agreed to cancel her son's bond for the 26 lacks she had already lent, and further, to pay 30 lacks more, or 300,000*l.* making in the whole 560,000*l.* sterling. In consideration of this immense sum given to the Nabob, that Prince released all claim to the landed and remaining part of the personal estates, left by his father, Sujah ul Dowlah, to the Princess's his widow. The full enjoyment and possession of the estates so confirmed to the Begum, by the Nabob her son, were guaranteed to her by Mr. Hastings. Whatever therefore might have been her title to this property before, her right under this treaty and this guarantee became as legal, as strong, and as binding, as the laws of India and the laws of nations could possibly make it.—The property of the elder Begum, or Princess, grandmother to the Nabob, stood exactly in a similar predicament, and on a similar foundation. She enjoyed her estates under a solemn treaty, and a solemn guarantee on the part of the English Government. But nothing legal, nothing sacred, could resist the lawless rapacity of Mr. Hastings, as these Princesses soon experienced,

As the representative of the government that had guaranteed the treaties which secured to these ladies their property, it was his duty to interpose his authority and influence in their behalf, if any attempt was made to spoil them of their fortune, in violation of the treaties: as a man, he was bound by every obligation of friendship and generosity to be the declared protector of the younger Princess: that lady, in a letter which she wrote to him, and which would not discredit the genius of an Elizabeth, or the abilities of a Cecil, stated, that when Sujah ul Dowlah was in his last moments, she approached his bed, and lamenting the misfortunes which were likely to befall her and his young children, who were going to be deprived of their only support, he bid her not to afflict herself so much for his loss; he would leave her a generous and firm friend and supporter in the person of Mr. Hastings, who would be a father to his children. This letter was written at a time when her son Asoph ul Dowlah was endeavouring to spoil her and his grandmother of their property. Mr. Hastings was moved

at the perusal of it, and wrote to the Nabob in behalf of his parents. In this letter he was clear and explicit upon the obligation that children were under to honour and respect their parents, and the duty which nature itself dictated to all relations, to love and assist one another: that duty, he said, was enjoined, not merely by the laws of this or of that country, but by those of all nations; it was proclaimed by the voice of nature itself. Here Mr. Adam observed, that when Mr. Hastings was speaking the language of nature, no man could speak it more forcibly, or deliver it more intelligibly; but when he was endeavouring to palliate actions of his own, which the laws neither of God nor man could warrant, his style was ambiguous and his language obscure, setting all fair construction at defiance, under the shew of splendid high-sounding but unmeaning diction. When the prisoner wrote that letter, had he changed his nature? or could the man who afterwards compelled the son to become his instrument to rob his parents, have dictated so humane a letter? Pards bred pards, tigers begat tigers, and the dove never was hatched under the vulture's wing: nature might sleep for a while, but must be nature still: and therefore, tho' the prisoner had for a time put on the semblance, and adopted the language, of humanity, it was only for a time; he soon threw off the mask, and displayed the same horrid disposition that dictated the treaty for the extermination of the Rohillas, and the same barbarity that marked the progress of that abominable war.

Mr. Hastings expected that the country of Oude, exhausted as it was by the immense fortunes that had found their way from it into Great-Britain, by the extravagant military establishments that were kept up in it, and by the subsidies paid to the Company, should be as full of wealth and resources as it was before its connection with the English, when its revenue, exclusive of that of the Douab and Rohilcund, exceeded three crores, or THREE MILLIONS STERLING, a-year. That revenue, when the Nabob's dominions were less extensive, defrayed all the expences of government, and the state was not a rupee in debt: but such had been the drain of wealth from Oude after its connection with the Company, that though the produce of the Douab and of Rohilcund was by the conquest of those countries added to the revenue of Oude, the whole was insufficient to the charge of its establishments, and the Nabob was plunged in debt, from which he saw no resource of extricating himself: but Mr. Hastings, more quick-sighted, or less scrupulous than the Priase, saw a great

great resource in the real and personal estates of the Begums, and insinuated to him, that if he would seize them, he would be able to relieve himself from his embarrassments, and pay off a considerable part of his debt to the Company. The Nabob was shocked at the insinuation; as a son, he felt a degree of horror at the idea of becoming the plunderer of his parents; and as a MAN OF HONOUR, he could not bring himself to violate a treaty which he himself had made, and confirmed with an oath, and for which the Princesses had given a valuable consideration. The sentiments of that Prince on the occasion were very strongly expressed by Mr. Middleton, the English Resident at his Court, in these words, in a letter from Lucknow, dated the 6th of December, 1781; in another, dated the following day; and in a third, dated the 9th of the same month:—

“ Finding the Nabob wavering in his determination about the resumption of the jaghires (the landed estates of his parents), I this day in presence of, and with the Minister’s concurrence, ordered the necessary perwannahs to be written to the several Aumeels for that purpose; and it was my firm resolution to have dispatched them this evening, with proper people to see them punctually and IMPLICITLY carried into execution: but before they were all transcribed, I received a message from the Nabob, who had been informed by the Minister of the resolution I had taken, entreating that I would withhold the perwannahs until to-morrow morning, when he would attend me, and afford me satisfaction on this point. As the loss of a few hours in the dispatch of the perwannahs appeared of little moment, and as it is possible the Nabob, seeing that the business will at ALL EVENTS BE DONE, may make it an act of his own, I have consented to indulge him in his requests; but be the result of our interview whatever it may, nothing shall prevent the orders being issued to-morrow, either by him or myself, with the concurrence of the Ministers. Your pleasure with respect to the Begums I have learned from Sir Elijah Impey; and the measure heretofore proposed will soon follow the resumption of the jaghires. From both, or indeed from the former alone, I have no doubt of the complete liquidation of the Company’s balance.”

DEC. 7, 1781.—“ I had the honour to address you yesterday, informing you of the steps I had taken in regard to the resumption of the jaghires. This morning the Vizier came to me, according to his agreement, but seemingly without any

“ intention or desire to yield me satisfaction on the subject under decision; for after a great deal of conversation, consisting on his part of trifling evasion, and puerile excuses for withholding his assent to the measure, though at the same time professing the most implicit submission to your wishes, I found myself, without any other resource than the one of employing that exclusive authority with which I consider your instructions to vest me: I therefore declared to the Nabob, in presence of the Minister and Mr. Johnson, who I desired might bear witness of the conversation, that I construed his rejection of the measure proposed as a breach of his solemn promise to you, and an unwillingness to yield that assistance which was evidently in his power, towards liquidating his heavy accumulating debt to the Company; and that I must, in consequence, determine, in my own justification, to issue immediately the perwannahs, which had only been withheld in the sanguine hope that he would be prevailed upon to make that his own act, which nothing but the most urgent necessity could force me to make mine. He left me without any reply; but afterwards sent for his Minister, and authorized him to give me hopes that my requisition would be complied with; on which I expressed my satisfaction, but declared that I could admit of no further delays; and unless I received his Excellency’s formal acquiescence before the evening, I should then most assuredly issue my perwannahs; which I have accordingly done, not having had any assurances from his Excellency that could justify a further suspension. I shall, as soon as possible, inform you of the effect of the perwannahs, which, in many parts, I am apprehensive it will be found necessary to enforce with military aid. I am not, however, entirely without hopes, that the Nabob, when he sees the inefficacy of further opposition, may alter his conduct, and prevent the confusion and disagreeable consequences which would be too likely to result from the prosecution of a measure of such importance without his concurrence. His Excellency talks of going to Fyzabad (the residence of his mother and grandmother) for the purpose heretofore mentioned, in three or four days. I wish he may be serious in his intention, and you may rest assured I shall spare no pains to keep him to it.”

DEC. 9, 1781.—“ I had the honour to address you on the 7th inst. informing you of the conversation which had passed between the Nabob and me, on the subject

of refusing the jaghires, and the steps I had taken in consequence. His Excellency appeared to be very much hurt and incensed at the measure, and loudly complains of the treachery of his Ministers; first, in giving you any hopes that such a measure would be adopted; and, secondly, in their promising me their whole support in carrying it through: but, as I apprehended, rather than suffer it to appear that the point had been carried in opposition to his will, he at length yielded a *nominal* acquiescence, and has this day issued his own *perwannahs* to that effect; declaring, at the same time, both to me and his Ministers, that it is AN ACT OF COMPELSION."

Thus their Lordships would see, that though this Prince had a regard for his character as a son, a man, and a Prince, and felt a horror at the idea of violating an oath, Mr. Hastings was above all such trifles of consideration, and was not satisfied till he forced this unfortunate Prince to break through all the ties of nature and religion, and rob those of the means of supporting life from whom he derived his existence.

In the remaining part of Mr. Adam's speech he stated the hardships and distresses which the other children and wives of his father were made to endure by the Nabob. Such was their want of food, the Princesses who had hitherto supported them being plundered, that the brothers of the Nabob begged that they might be suffered to go forth into the world, to earn their bread by their daily labour; and the women, who in India think the sight of a man, not their husband or near relation, a downright pollution, expiable only by death, were become so outrageous for food, that they forced their way out of the Zenana, but were beat back with bludgeons by the sepoys.

He could not say that all these cruelties were committed by the express order of Mr. Hastings; but they were perpetrated by the order of the English Resident, who was the mere creature of Mr. Hastings, who acted under his authority, and who, with the knowledge of the Governor-General, had engrossed the administration of every department in the state of Oude, civil, military, judicial, and of finance, and left the Nabob but a shadow of power: he knew also, that when all these particulars were afterwards communicated to Mr. Hastings, he did not take one single step towards punishing those who had acted with so much barbarity.

In the narrative which Mr. Hastings drew of this whole transaction he had *FALSIFIED* dates, in order to impute guilt to the Be-

gums, which could not be imputed to them if the true dates were set down.

While the latter assertion was made by Mr. Adam, that temper which had marked, and so meritoriously marked, the deportment of Mr. Hastings, left him for a moment, and across his box, to a gentleman in it, he whispered, "that the assertion was false!"

At these words Mr. Adam grew more impetuous.

"What, said he, shall I hear, my Lords, and bear, that my assertion shall be contradicted? Shall I, who stand here as the Delegated Manager of the Commons, be told that I am advancing what is untrue? In the situation in which I stand—and from that degraded man at your bar, loaded with crimes, and groaning under his enormities—I will not bear it.—To your Lordships I appeal for PROTECTION!"—[Here various persons in the Court rose up—and a brother Manager touching Mr. Adam, he recovered himself, and went on more calmly.]—"No, my Lords, my assertions will prove to be true: I will trace the guilt of Mr. Hastings—from the first attempts at expedience—from the trial of a measure, and the fear of its failure, to the joy at its execution, and the triumph at its success:—I will show him to you, falsifying his trust—defrauding the East-India Company:—I will prove him guilty of FORGERY and MURDER!"—Mr. Hastings no longer shewed any emotion.

After various quotations from Latin Authors, by which Mr. Adam attempted to enforce his speech, and which he quoted and intermixed so rapidly with English, that it was almost impossible to distinguish the "dead from the living," he proceeded to that part of the Begum Charge which brought in the name of Sir Elijah Impey.

"If I respect the Law, said Mr. Adam, of which I am a Member; if I revere its doctrines, or am proud of the profession—how must I, and how must every lover of the Laws or Constitution, around me, feel, when we reflect upon such a man—such a lawyer, and such a being in the character of a Judge, as is Sir Elijah Impey! throwing aside the unfulfilled promise, and the sacred dignity of his profession, to go on the common errands of a Commissioner; to take the affidavit of every man who would make one; and thus, on *ex parte* evidence, sworn with such speed as left truth out of the question—and given in a corner—in the house of Mr. Middleton, where every thing that can create suspicion, might be expected to be found—thus to destroy these wretched Begums!"

After speaking three hours and a quarter —Mr. Adam drew towards the conclusion, which he pointed as follows :

" If what once drew attention at this Bar, in the person of Lord Lovat : if then—the same summary mode of proceeding which Mr. Hastings chose in India, had been adopted—what would your Lordships have thought—or, what would future times have said of our memories ?—If that Lord Lovat, instead of being brought to a fair and honourable trial, had been instantly destroyed by his conqueror—the great Duke of Cumberland—would not your Lordships, with one voice, have pronounced it unnecessary and inhuman destruction ? Not less so was the conduct of Mr. Hastings against the Princesses of Oude :—unfortunate in having no Law but the Will of their Conqueror :—and whose Will had no Feeling for its guide !"

" At the close of his own written Defence," said Mr. Adam, " Mr. Hastings has taken up an address similar to that of the Earl of Strafford :—He tells you, that he was sent young to India, and almost unacquainted with its nature and its manners :—that in the most trying situations, he was forced to be his own guide ; his own Politician ; his own General ; his own Divine ; and his own Judge ! That in duties so numerous and so complicated, the best abilities might err : his talents have not that boast ; and therefore should his errors, if such were found, meet the pardon of his country."

" If a plea similar to the Earl of Strafford be taken up by Mr. Hastings—then will I adopt the answer of one of the greatest men this nation has ever had to boast—I mean Mr. Pym.—He says—with justice he urges it—We ask not for preternatural abilities, nor expect them : but here, there is transgression against every rule : The light of Nature : The light of Reason : The light of common Humanity : all might have led him into a better path ; but wilfully, he chose to stray from the safe road, and if danger should await him, it is his own seeking."

Mr. Adam then addressed himself to the Lords, and adjured them, in the different capacities of Judges, Fathers, Sons, Peers, Englishmen and Men, to find Mr. Hastings guilty*.

Mr. Pelham would now have continued

the Charge ; but the Court finding that it was four o'clock, adjourned.

FIFTEENTH DAY.

WEDNESDAY, APRIL 16.

Mr. Pelham informed their Lordships, that it had fallen to his lot to make some observations upon the answer delivered by Mr. Hastings to the Second Charge. And here he lamented their Lordships' rigid adherence to a resolution, which introduced a practice so very different from that which prevailed in the Courts below, and which obliged him to take notice of this answer before any evidence had been brought by the accused in support of it. The Managers laboured under difficulties unknown to any former Committee of Managers ; and those difficulties were increased by the number of friends by whom the prisoner was countenanced and protected. True friends, who wished for the honourable acquittal of the object of their friendship, would require that every source of evidence should be explored, and laid open to the judges ; for by such means ONLY could an HONOURABLE acquittal be produced. But those who considered not the HONOUR of their friend, but the IMPUNITY of his PERSON, and the PRESERVATION of his ill-acquired WEALTH, would wish to keep back every particle of evidence that might throw light upon the cause. Against such friends of Mr. Hastings the Managers had to contend ; and from the mouths of such men were they to endeavour to draw forth truth.

Having premised this, he observed, that the defence set up to the second charge by Mr. Hastings himself and his friends, both in Parliament and out of it, rested entirely upon the plea of NECESSITY.—The seizure of the treasures and jaghires of the Begums could not be defended by such a plea ; because the prisoner was not obliged by necessity to commit this act of injustice : on the contrary, that necessity, whatever might be its degree upon which he rested his defence, was the consequence of his own malversation, and therefore it ill became him to urge one crime by way of justifying another. The great source of all the evils that had befallen the country of Oude, was in the resolution the Governor-General had formed to make the Nabob take the temporary brigade into his pay : to this measure might be ascribed and traced all the subsequent calamities and distresses of that

* Mr. Adam was up three hours and an half, and was heard with great attention. In many parts he deserved it. In parts there was a violence liberal men do not love.

The Commons were more numerous than usual. The female part of the audience were in greater numbers than have lately been seen.

country and its Sovereign. The sums necessary for the support of such a body of troops were too great for the treasury of Oude to bear; and the consequence of their being kept up was, that the Nabob was daily contracting debts, which he had no prospect that he would ever be able to discharge. The Prince was fully aware of this, and frequently endeavoured to get rid of the expence by sending away the brigade; but he found he was not the master of his own treasure, or the sovereign of his dominions; for Mr. Hastings had caused it to be signified to him, that the Council at Calcutta, and not the Nabob, should judge of the expediency of withdrawing the brigade. It was evident, therefore, that as the necessity which Mr. Hastings urged in his defence was founded in the disordered state of the Nabob's finances, and as that disordered state was produced by Mr. Hastings himself, the necessity which he pleaded in his justification was created by himself, and consequently inadmissible as an answer to a criminal charge.

Another ground of defence was, that the article in the treaty of Chunar, by which the prisoner consented that the Nabob should seize the lands of his mother and grandmother, was barely *permissive*, and by no means *imperative*. He would contend, that though this were admitted, the prisoner would not appear the less criminal; for as the English Government was solemnly pledged to maintain the Princesses in the possession of those estates, it was no less a breach of duty in the head of that government to *permit* than to *command* an act that amounted to a violation of the treaty to which the English were guaranties. Our justice ought not to suffer us to violate that treaty ourselves; our honour was interested in preventing another from doing it. But the truth was, that the treaty was violated under the authority, nay by the *command*, of the prisoner; for by repeated messages and *injunctions*, and under menaces of "a dreadful responsibility," he urged the Resident to a completion of the barbarous act of spoiling the Princesses by the hand of their own son; and well knowing that such an act would probably be resisted, he ordered the Resident to use the *British troops* under his direction for that purpose; and offered the assistance of further forces, urging the execution in the following peremptory terms: "You *yourself* must be *personally present*— "You must not allow any negotiation or forbearance; but must prosecute both *services*, until the Begums (the Princesses) are at the entire mercy of the Nabob."— Their Lordships had heard yesterday, from the authority of the Resident's letter, that

the Nabob, so far from having been a *willing* instrument in the hand of the prisoner, had thrown all possible delay in the way of the measure; and when at last he lent his name and countenance to it, he declared and protested that he did so by *compulsion*.

The prisoner could not throw the blame of this measure on the Resident; for the measure was so far from originating with the latter, that he incurred the displeasure of Mr. Hastings for having allowed the Nabob *two days* to consider of the part that he should take. The Resident was so much a creature of the Governor-General, that he was ready to say or to unsay, to represent fairly, or to misrepresent, just at the will and pleasure of his principal. This appeared manifest from the following letter, written by Mr. Middleton, the Resident, on the 30th of December 1781, some few days after he had informed him that orders had been issued for seizing the estates of the Princesses, and that the Nabob had at length agreed to take an active part in the business, though under a protest that he acted by compulsion.

"My dear Sir,

"I have this day answered your *public* letter, in the form you seem to expect: I hope there is nothing in it that may appear to you too pointed. If you wish the matter to be otherwise understood than I have taken up and stated it, I need not say I shall be ready to conform to whatever you may prescribe, and to take upon myself any share of the blame of the "hitherto" non-performance of the stipulations made on behalf of the Nabob.— "Though I do assure you I myself represented to his Excellency and the Ministers, conceiving it to be your desire, that the apparent assumption of the reins of his government, for in that light he undoubtedly considered it at the first view, as specified in the agreement executed by him, was not meant to be *fully and literally* enforced; but it was necessary you should have something to shew on your side, as the Company were deprived of a benefit, without a requital; and upon the faith of this assurance alone, I believe I may safely affirm his Excellency's objections to signing the treaty were given up. If I have understood the matter wrong, or misconceived your design, I am truly sorry for it; *however, it is not too late to correct the error, and I am ready to undertake, and, God willing, to carry through, whatever you may, on receipt of my public letter, tell me is your final resolve.*"

From such a letter their Lordships must be convinced, that the Resident was too much devoted to the prisoner to do any thing that

that he thought would displease him—too much in awe of him to dare to execute any great measure of state without his knowledge or command. Fortunately for the cause of public justice, Mr. Hastings had quarrelled with Mr. Middleton, and that quarrel had brought to light the dark transactions in Oude, which otherwise would perhaps never have seen the day. But unfortunately for Mr. Hastings, the quarrel was not occasioned by the wrath of that gentleman, in finding that Mr. Middleton had exceeded his orders, but, on the contrary, that he had not rigorously fulfilled those harsh and severe injunctions, “that he should not allow any negotiation or forbearance;” and Mr. Middleton was guilty of the heinous crime of allowing the Nabob *two whole days* to consider whether he would take an active part in plundering his parents. It would have been happy for this country that the whole conduct of the Resident had been as irreprehensible as this part of it.

That the treaty by which we were bound to protect the Begums was understood by the Company to be a sacred obligation upon our faith and upon our honour, appeared from the letter written by the Court of Directors, immediately after they had learned that the Princesses had been spoiled of their property: they stated in that letter, that as we were undoubtedly bound to maintain to the Begums the possession of the jaghires, they trusted that the guilt of these ladies was as clear as day, and a matter of public notoriety in the country, because if it were otherwise, our national honour would receive a wound which could never be healed. But so far was that guilt from being a matter of notoriety, that it was not known at all, that it never was proved; nay, that it had not been so much as urged as a reason for the resumption of the jaghires; for when it was resolved that such a measure should be adopted, it was represented as part of a general system of policy, and not as a punishment inflicted on the Princesses for crimes committed by them. It was represented to them, that the Nabob intended, for reasons of state, to resume all the jaghires in his dominions, and the jaghires of the Princesses of course, as part of them. Here was no mention of guilt, or of so much as a suspicion of it. The truth of the business was, that Mr. Hastings, disappointed in his hopes of getting possession of Cheyt Sing's treasures in the Fort of Bidjegur, the army having divided them among themselves, began to consider where he could get money. Sir Elijah Impey saw him at that time, and said that he had never seen “his great mind in such distress.” The treasures and jaghire of the Begums

held out the prospect of a plentiful resource, and he resolved to avail himself of it. He procured the Nabob to discharge his debt to the Company: that Prince pleaded inability; Mr. Hastings pointed out the jaghires of his parents: the Nabob said he had retrenched even from the delicacies of his table, and from the number of elephants, &c. in his stables, and had done every thing to diminish his expences and produce savings; but over the jaghires of his parents he said he had no power nor authority: Mr. Hastings insisted that he should resume them, and justified the measure by the plea of necessity. This was the plea of *Bagshot-Heath*.—A highwayman might say, “I want money, and I must have it.” He might stop a traveller, but disappointed of his booty, by not finding any money upon him, he might say to himself, “Is there no house in the neighbourhood that I may break open? Are there no rich old ladies whom I may plunder? I am in want of money; it is absolutely necessary to me; and therefore necessity being above all law, I must have money at all events.”

The Nabob was so far from having been a willing instrument in the hands of the Governor-General on this occasion, that even after he seized the jaghires, he begged he might be at liberty to restore them. But on that head Mr. Hastings had written to the Resident, “If the Nabob shall ever offer to restore their jaghires to them, or give them any property in land, you must re-monstrate in the strongest terms against it. You must not permit such an event to take place, until this government shall have received information of it, and shall have time to interpose its influence for the prevention of it.”

The distresses brought upon the family of the late Nabob Sujah ul Dowlah, in consequence of the seizure of the Begums' jaghires, which deprived these Princesses of the means of maintaining their offspring and the ladies and officers of their households, were great beyond expression. Some idea of them might be formed from the following accounts of them sent to the Resident, by Captain Leonard Jaques, who commanded the forces on duty, for the purpose of distressing the women in the palaces of Fyzabad.

“The women belonging to the Khord Mohul, or lesser palace, complain of their being in want of every necessary of life, and are at last driven to that desperation, that they at night get on the top of the Zenana, make a great disturbance, and last night, not only alarmed the sentinels posted in the garden, but threw dirt at them: they threatened to throw themselves
F 2 “ selves

“ selves from the walls of the Zenana, and
 “ also to break out of it. Humanity ob-
 “ liges me to acquaint you of this matter,
 “ and to request to know if you have any
 “ directions to give me concerning it. I
 “ also beg leave to acquaint you, that I sent
 “ for Littasit Ally Khan, the Cojah, who has
 “ the charge of them, and who informs me
 “ it is well grounded, that *they have sold*
 “ *every thing they had, even to the cloaths, and*
 “ *their backs, and have now no means of subsist-*
 “ *ing.*”

This letter was written on the 6th of March 1782; but the distresses of these women grew so urgent on the night of that same day, that Capt. Jaques wrote again the following day to the same Resident in the following words:—“ I beg leave to address you again concerning the women in the Khord Mohul; their behaviour last night was so furious, that there seemed the greatest probability of their proceeding to the utmost extremities; and that they would either *throw themselves from the walls, or force open the doors of the Zenana* (the women’s apartments). I have made every enquiry concerning the cause of their complaints, and find, from Littasit Ally Khan, that *they are in a starving condition, having sold all their cloaths and necessaries; and now have not wherewithal to support nature.*” And as my instructions are quite silent on this head, I should be glad to know how to proceed in case they were to force the doors of the Zenana, as I suspect it will happen, should not subsistence be very quickly sent to them.”

These humane letters produced little effect; for, on the 30th of October following, Major Gilpin, who had succeeded Captain Jaques in the command of the troops of Fyzabad, wrote as follows to the Resident.

“ Sir,
 “ Last night, about eight o’clock, the
 “ women in the Khord Mohul, or Zenana,
 “ under the charge of Littasit Ally Khan,
 “ assembled on the tops of the buildings,
 “ *crying in a most lamentable manner for food;*
 “ *that for the last four days they had got but a*
 “ *very scanty allowance, and that yesterday*
 “ *they had got none.*—The melancholy cries
 “ of famine are more easily imagined than
 “ described; and, from their representations,
 “ I fear the Nabob’s agents for that
 “ business are very inattentive: I therefore
 “ think it requisite to make you acquainted
 “ with these circumstances, that his Excel-
 “ lency the Nabob may cause his agents to
 “ be more circumspect in their conduct to-
 “ wards these poor unhappy women.”

This letter was not more effectual than the

others; for the women and children of the late Sovereign, father of the reigning Prince, continuing exposed to frequent want of common necessaries of life, and being sorely pressed by famine, they were compelled to break through all the principles of local decorum and reserve, which constitute the dignity of the female sex in that part of the world; and after great clamour and violent attempts, for one whole day, to break the inclosure of the palace, and force their way into the public market, in order to move the compassion of the people, and to beg their bread; and on the next day they actually proceeded to the extremity of exposing themselves to public view—an extremity, implying the lowest state of disgrace and degradation; to avoid which many women in India have laid violent hands upon themselves.—And they proceeded to the public market-place, with the *starving* children of the late Sovereign, the brothers and sisters of the reigning Prince.—This appeared from a minute account written to the Resident at Lucknow, by the person appointed to convey intelligence to him from Fyzabad; an account containing matters highly disgraceful to the honour, justice, and humanity of the British nation.

Hence Mr. Pelham read the following account:—

“ The ladies, their attendants, and servants, were still as clamorous as last night. Littasit, the Dargah, went to them, and remonstrated with them on the impropriety of their conduct; at the same time assuring them, that in a few days all their allowances would be paid; and should that not be the case, he would advance them ten days subsistence, upon condition that they returned to their habitation. None of them, however, consented to his proposal, but were still intent upon making their escape through the Bazar (the market-place); and, in consequence, formed themselves into a line, and arranged themselves in the following order: the children in the front; behind them, the ladies of the seraglio; and behind them again, their attendants; but their intentions were frustrated by the opposition which they met from Littasit’s sepoyas.

“ The next day Littasit went twice to the women, and used his endeavours to make them return into the Zenana, promising to advance them ten thousand rupees, which, upon the money paid down, they agreed to comply with. But night coming on, nothing transpired.

“ On the day following their clamours were more violent than usual. Littasit went to confer with them upon the business of yesterday.”

“ yesterday, offering the same terms. Depending upon the fidelity of his promises, they consented to return to their apartments, which they accordingly did, except two or three of the ladies, and most of their attendants. Littaft went then to Hoffmund Ally Khan, to consult with him upon what means they should take. They came to a resolution of driving them in by force; and gave orders to their sepoys to beat any one of the women who should attempt to move forward. The sepoys consequently assembled, and each one being provided with a bludgeon, they drove them by dint of beating into the Zenana. The women seeing the treachery of Littaft, proceeded to throw stones and bricks at the sepoys, and again attempted to get out; but finding that impossible, from the gates being shut, they kept up a continual discharge of stones and bricks till about ten o'clock, when finding their situation desperate, they retired into the Kung Mohul, and forced their way from thence into the palace; and dispersed themselves about the house and garden. After this, they were desirous of getting into the Begum's apartment; but she being surprised of their intention, ordered her doors to be shut. In the mean time, Littaft and Hoffmund Ally Khan posted sentries to scour the gates of the lesser Mohul. During the whole of this conflict, all the ladies and women remained exposed to the view of the sepoys. The Begum then sent for Littaft and Hoffmund Ally Khan, whom she severely reprimanded, and insisted upon knowing the cause of this infamous behaviour: they pleaded, in their defence, the impossibility of helping it, as the treatment the women had met with had been conformable to his Excellency the Vizier's orders. The Begum alleged, that even admitting that the Nabob had given those orders, they were by no means authorised in this moment to disgrace the family of Sujah ul Dowlah; and should they not receive their allowance for a day or two, it would be of no great moment; what was passed was now at an end; but that the Vizier should certainly be acquainted with the whole of the affair. She then gave the children 400 rupees, and dismissed them, and sent word by Jumrud and the other eunuchs, that if the ladies would peaceably retire to their apartments, Littaft would supply them with 3 or 4000 rupees for their personal expences, and recommended to them not to incur any further disgrace. The ladies followed her advice, and about ten at night went back to the Zenana. The next morning the

“ Begum waited upon the mother of Sujah ul Dowlah (the grandmother of the reigning Prince) and related to her all the circumstances of the disturbances: the mother of Sujah ul Dowlah returned for answer, that after there being no accounts kept of *Chores* of revenues, she was not surprised that the family of Sujah ul Dowlah, in their endeavours to procure a subsistence, should be obliged to expose themselves to the meanest of the people. After bewailing their misfortunes, and shedding many tears, the Begum took her leave, and returned home.”

This narrative of distress, occasioned by the poverty of the Nabob, and the spoiling of his parents, both of which had their rise in the rapacity of the Governor-General, was sent to him on the 29th of January following; but he neither ordered any relief in consequence of it, or took any notice whatsoever of the intelligence he had received on the subject. In his Defence, indeed, he had said, that he was not bound to protect these people; but if he had any humanity, he would have used his influence, which was all-powerful in Oude, to relieve the distresses which he himself had occasioned.

With this narrative, and some few observations upon it, Mr. Pelham concluded a speech, which he was three hours in delivering.

Mr. Sheridan rose on the heels of Mr. Pelham, and stated an arrangement or two of order he should wish to adopt, in the production of evidence on the charge now opened. The more material point of his proposed arrangement was to print, with the participation of the Prisoner's Counsel, who nodded consent,—*not* the whole of any voluminous tract exhibited in evidence, as the Benares Narrative, &c.—*but* only the particular point, or partial extract, strictly relevant, and closely applying.

Major SCOTT

was then called—and was examined chiefly by Mr. Sheridan;—yet not only by him, but by Mr. Fox, Mr. Burke, and Mr. Adam.

The Peers who proposed each two questions were, Lord Stanhope, Lord Derby, Lord Stormont, Lord Portchester, and Lord Loughborough.

The printed answer to the Benares charge was shewn to the Major, to prove it was written by Mr. Hastings.

His evidence went to prove it was written by Mr. Halhed—That Mr. Hastings might see or hear it, *though in a way the most cursory*; the night before it was to be delivered—and that, before it was delivered to the House, several passages were added, and still exist on
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the recorded copy, in the hand-writing of Mr. Halhed !

That these additions Mr. Hastings did not, because he could not see them ; and these additions include arguments thought most exceptionable. The specific pages, as 13, 24, &c. of the octavo, were thus noted by him with a pen and ink.

Major Scott further proved—That it was not only in the Benares charge that such a separation was to be made—but in every charge except two, the answers were supplied, *in the hurry of the five or six days prescribed*, by various friends of Mr. Hastings.

These friends are as follow :

Mr. Shore, one of the Supreme Council,
Mr. David Anderson,
Major Gilpin,
Mr. Baber,
Mr. Middleton,
Mr. Martin,
Mr. Benn,
Major Scott himself,

with Mr. Halhed, before-mentioned as the writer of the Benares charge.

These, with other gentlemen, friendly enough thus to communicate, had furnished the answers to all the 22 charges.

The two exceptions were, the answers to the Rohilla war—and the King's tribute.—These, as then being the questions *thought to bear the most stress*, were answered by Mr. Hastings himself !—To these he also added the General Introduction.

Before this evidence was thus detailed, there was a short altercation on its introduction ; and the Counsel of Mr. Hastings argued very successfully this undeniable plea :—“ That in a criminal prosecution, it is the right, according to all legal policy and humane expedience, of every person criminally charged, to review any declaration or confession that may have escaped him ; and in any mode of mitigation, if he can, to illustrate and explain—with the aid, collateral or direct, of all those motives, whether of fact or argument, which might have induced him so to deliberate, or so to do.”

Mr. Law well referred to the cases of Sel-den and Sir J. Elliot. Mr. Plummer used dexterously the familiar instance of confessions before a Justice of the Peace ; and Mr. Dallas was following at a good rate, when he was stopped in the best way, by the point being carried.

The clock was near six, when the Court adjourned *.

SIXTEENTH DAY.

THURSDAY, APRIL 17.

* The Peers assembled at the usual hour.

Mr. Sheridan informed the Court, that the first evidence whom it was proposed to call on, was

Mr. HOLT,

a gentleman who had been long Resident in the Province of Oude ; and whose evidence, from his official situation, would apply to some other charges beside that which was now to be proved.

The Counsel for Mr. Hastings desired to know to which of the future charges the evidence of Mr. Holt was to be applied.

Mr. Sheridan answered, that in a business so complicated, and of which the parts were so intimately interwoven with each other, it was not possible to ascertain in what part of the business any specific evidence might be deemed necessary to the prosecution.

Mr. Holt was called—

His evidence in part applying to this charge, and to another.—It there was some small irregularity in this mode, it was none but what humane expedience would approve ; for otherwise Mr. Holt, who is a useful servant of the India Company, would have lost his voyage.

Mr. Holt was an assistant to Mr. Middleton and Mr. Bristow, when Residents at Oude ; and he was called to exhibit what testimony he could, as to the disorders of Lucknow—and how far they were or were not conceivable to exist, with the cognizance of Mr. Hastings.

For this purpose he was examined, not only as to facts, but opinions—what, on certain topics, was the rumour, and the supposed rumour, among the people ?

This Mr. Burke and Mr. Sheridan, in few words, maintained to be expedient, and very potently applying : Mr. Law, in words yet more few, observed to be new doctrine as to evidence, but which he admitted ; claiming only a reciprocal right to advance on hearsay, in his turn.

Mr. Sheridan, in the outset, called on Mr. Holt for a narrative of the country ; its political and physical circumstances.

Mr. Holt very neatly waved his attempt of such a task ;—as in a country like that, as large as our island, he might easily want words at least, if not sentiments, to expatiate. He begged therefore the Hon. Manager to break the mass of his general enquiry into particular questions, which he would try to answer as well as he could.

* The auditory were rather less numerous, and rather more unquiet, from colds and coughs, than ever we heard before.—The Peers were few ; and the Commons not fifty, till past three o'clock—when, by the luckiest accident, they came in great numbers.

In the course of this examination, he stated the local distresses to have arisen from the influence of bad seasons, and unfavourable government—That there had been remissions of tribute—That in respect to punishments, some were corporal, with a thong—That imprisonment was in forts, and in open squares, inclosed with bamboo canes.—That the sun might happen to be unpleasant—That he had *heard* Col. Hannay died worth 30 lacs, or 300,000l.—That he had *heard* most of the money was remitted to Calcutta, some in goldpores, some in other forms—That the people of that country sometimes sold their children—which had been attempted to be stopped.

The great object attempted, by adducing the evidence of Mr. Holt, seemed to be, to prove the influence which Mr. Hastings held over the Nabob. How far this was proved, it is not for us to say—for us to determine.

It appeared, however, on the cross-examination of Mr. Holt by Mr. Law, as Counsel for the defendant, that if the police in many of the towns was bad, it was not Mr. Hastings who prevented any of the proper proceedings of the Courts—That as to *indirect interference*, it was usual for the Residents occasionally to interfere in the Nabob's government.—That the taxes were always collected under an Aumcel giving directions to a military force.—That Major Osborne had been employed on this duty; but that no complaints had been, or could be, made against his conduct in that duty.—That Doctor Thomas, who had a salary from Government, was the surgeon to the Vizier; and a great favourite with him, on account of that *fit* the Vizier had found necessary to have recourse to.

Mr. Holt was examined—re-examined—cross-examined—and re-cross-examined, for the space of *five hours* by Messrs. Sheridan, Burke, Adam, and one question was ventured on by Major Pelham:—Then, on the other side, by Mr. Law and Mr. Plummer—through every part of which he spoke with plainness, precision, and distinguished good sense.

The Court put different questions to Mr. Holt, on the subject of finding out the knowledge which Mr. Hastings might have of different transactions; but which was not proved in the affirmative.

Mr. Holt, in the course of his evidence, gave a very curious description of the Nabob's cavalry—their uniforms being frequently coats without sleeves, and sleeves sewed to half a shirt.

Mr. Burke made some observations on the Defence delivered in by Mr. Hastings as his

own. He declared "he now knew not what to call it:—whether his legitimate or his natural child:—whether it was his by adoption; or, whether it had been *tied* as *his knocker*, and fathered by him out of charity!"

In the course of the various discussions which arose from the objections of Mr. Hastings's Counsel, the Lord Chancellor concluded an observation, by saying, "that he felt himself responsible to that High Court for every opinion he should deliver, and for every other part of his conduct."—Mr. Burke replied, by admitting the responsibility: but declared, at the same time, that the Managers of the House of Commons, from the whole of his Lordship's conduct, had felt the most perfect satisfaction.

At five o'clock, the evidence of Mr. Holt being concluded, the Court adjourned.

SEVENTEENTH DAY.

TUESDAY, APRIL 22.

The Court being met soon after twelve o'clock, Mr. Burke stated, that Mr. Holt not being on his departure to India, it was wished to have him called again, for his answer to a few questions. The questions would be very few, Mr. Burke said—but very important.

The Counsel of Mr. Hastings not opposing, and the Chancellor nodding consent, Mr. Holt re-appeared.

He was examined by Mr. Burke—he was cross-examined by Mr. Law—in a manner to each examiner equally reputable; both for pertinence of drift, and perspicuity of expression.

The leading points illustrated by his evidence was, that in Oude there was *some* local restraints on the commerce and manufacture of the country—That Mr. Scott had a monopoly of cloth—but that the proposed gain, from these restrictions, was vested in the treasury of the Company.

This evidence Mr. Holt gave with perfect fairness and ready intelligence—answering very neatly, not only the Manager and the Counsel, but Lord Portchester, Lord Suffolk, Lord Kinnaird, and Lord Stanhope, to a question or two from each.

Colonel Hannay's fortune was again mentioned by Mr. Burke—and Mr. Holt having said from *hearsay*, that perhaps eight or ten people might have told him, in casual talk, that Mr. Hannay's fortune was rumoured at 30 lacs of rupees, he was asked, whether he supposed those eight or ten people were the only people who so talked of the rumour in question?

At the close of this examination, Mr. Holt mentioned, that he had been fibelled in the Morning Herald, and requested the protection of the Court.

The Lord Chancellor told him, that the Court could not at that time, and in that place, take his complaint into consideration.

Mr. Sheridan then observed, that the order in which the evidence was to have been brought forward had been in some degree deranged by the necessity of bringing forward in an early stage the whole of the evidence of Mr. Holt. That necessity, however, being done away, it was the intention of the Managers to proceed in future in the most regular form;—for this purpose it was necessary to desire, that the answer to the present charge delivered in to their Lordships by Mr. Hastings should now be read.

When this defence, which occupied near two hours, was concluded, Mr. Sheridan rose to assure their Lordships, that there was not a statement in that answer which was strictly accordant with the facts, nor one tending to the justification of Mr. Hastings which, as the Managers trusted, they could not fully disprove!

Several letters were then read, extracted from the Consultations, to prove from the language of Mr. Hastings himself the high dignity and respect due to the Princesses of Oude. Some letters from Sir Elijah Impey to Lord Rochford, the then Secretary of State, were produced to the same effect; and the late Chief Justice of Bengal himself was also called to establish the same propositions. Sir Elijah admitted very fully, that nothing could be more sacred than the character of a woman, nor more venerable than that of a mother, in India. Their inviolable modesty had been regarded in his own code for establishing the English laws, which dispensed with their appearance in Courts of Justice. He was convinced of the propriety of this dispensation, by the only instance which had met his experience—A woman had been tried for *adultery*; she was honourably acquitted, and treated with every mark of respect; yet such was her sense of a public exhibition of her person, that her feelings preyed upon her heart until she put an end to her existence.

Mr. Burke, after observing that it was highly necessary to prove the respectability of those principles, with the consequent delicacy of their feelings, as some attempts had been made to depreciate their title to distinction—proceeded to state the sense of persons in general, professing the Mahometan religion, with respect to the veneration due to the parental character. He quoted for this purpose some passages from the treatise pub-

lished by Demetrius Cantemir, the Mussulman Prince and Priest of Moldavia, containing a series of historical comments on the text of the Koran.

The Counsel for Mr. Hastings objected to this evidence. The *reveries of priests*, Mr. Law said, were neither relevant on the occasion, nor a proof in any degree applicable in a Court of Criminal Justice.

Mr. Burke replied, that whatever might be said respecting the *reveries of priests*, they were fully as valuable as the *waking dreams* of some learned gentlemen.—He professed himself never to have understood, that tho' historical evidence might be inadmissible as to particular facts, it should be objected to as a proof of local custom.—Mr. Sheridan added, that if Prince Cantemir would not, he trusted that Mr. Justice Buller might be believed.—When the laugh excited by this *whimsical association* had subsided, Mr. Sheridan quoted a passage from Mr. Buller's "*Law of Nisi Prius*," to prove that such historical passages were to be allowed in proof, as to matters of local usage.

The Clerk then proceeded to read the following among other extracts:—

VALIDE SULTANA.

"This name is appropriated to the mother of the reigning Sultan; and she cannot be so called before her son is arrived to the Imperial dignity, or after his deposition; because none but Mahmud Fatih and Selim Yauvuz have happened to mount the throne in their father's life-time.—The Sultans have always treated their mothers with great respect, in compliance with the divine precepts, and those of the Koran. They can not only introduce and change many things at pleasure in the Seraglio, but also the Sultan is forbid by the laws to lie with any of the women kept there, without his mama's consent. Every day, during the Feast of Bairam, the Sultan-mother presents a *beautiful virgin*, well educated, richly dressed, and adorned with precious stones, for her son's use: and though the Vizier, and the rest of the Bashaws, send, among other things, young virgins for presents to the Emperor, yet he touches none of them but what is brought by his mama. If the Sultan has a mind to chuse a concubine unknown to his mother, he may indeed do it without opposition; but he is reckoned to act contrary to the rules of the Seraglio, and against his *mother's honour*! Very often, the Sultan communicates to his mother the affairs of state, as Sultan Mahomet is known to have done; and sometimes she has conferences with the Vizier and Musti, under a veil, that she may not be seen,

"and

if he sent every paper to Calcutta which it was his duty to send? He begged, that as this question might have a tendency to criminate him, he might be excused from answering it.—The Court granted his request. Being asked, what he thought of the paper which he was of opinion had been prepared for signing, but had not been executed? he replied, that he thought it the same in substance with that which he had signed with the Begum.

Lord Loughborough asked, if he was not now aware that there was an *essential* variance in the one from the other. He said he was. His Lordship then asked, how he could still think them the same in substance? *He could not tell.*

Lord Stormont observed, that a man employed in an important negotiation might, after the lapse of years, forget what parts had been admitted, and what rejected; but he wished to know, whether the witness was of opinion, that any man so employed could forget whether his negotiation had ended in *any* treaty or *not*? Mr. Middleton replied, that he was of opinion he might; for he himself had forgot what had been the event of his negotiation with the Nabob.—Many other questions were asked by the Managers and by noble Lords; but Mr. Middleton said, his recollection, after a period of ten years, was very imperfect, *and he had never since refreshed his memory on the subject.*

At a quarter past six the Court adjourned.

NINETEENTH DAY.

THURSDAY, APRIL 24.

The Court having assembled before twelve o'clock, a variety of papers extracted from the Secret Consultations were read for the purpose of proving the situation of the Nabob of Oude in 1780; his distresses, even after the reduction of his household; his proposal to tax the incomes of the various jaghidars in his district, and the reluctance which he expressed to the inclusion of the Begums in this measure.—Some of his appeals were singularly pathetic:—"I prefer the interests of my friends," said he, "even to life itself; but what can I do in my present situation? I have houses, elephants, and cattle;—if these will suffice for the payment of my debt, take them;—if there be found any uncollected revenue, you may receive it without opposition.—I have discharged my old servants, I have contracted my expences; but in a ruined country, and from the failure of the last harvest, it is impossible for me to

"comply, in the manner stated, with your demands."

The Managers desired that

Mr. PURLING

should be called in.

This gentleman stated, that he had been Resident at the Court at Lucknow, and had pressed the Nabob to tax the jaghires for the purpose of finding means to liquidate his debt with the Company. The Nabob told him, that it was not in his power to tax the jaghires, at least such of them as were possessed by his mother and grand-mother, as he had entered into treaties with them both, by which he had bound himself to leave them the undisturbed possession of all their real or personal property, renouncing, at the same time, all claim upon either, and all right to make any claim; and that those treaties were guaranteed by the English. That, as a proof of this, the Nabob caused copies of these two treaties to be delivered to the witness, one of which bore the signature of Mr. Bristow, the other of Mr. Middleton; the former was put to the treaty with the younger Begum, the latter to that with the elder. This latter treaty was that which Mr. Middleton could not recollect yesterday that he had ever signed. But so satisfied was Mr. Purling that they were authentic copies of subsisting treaties under the guarantee of the Company, that he sent them to Calcutta, and stated them to have induced him to desist from importuning the Nabob to tax the jaghires included in the guarantee. Mr. Middleton was at Calcutta when Mr. Purling sent thither the copies of the treaties; and though Mr. Hastings had an opportunity of making enquiries from Mr. Middleton at that time, about the authenticity of this latter treaty, Mr. Purling never had any doubt expressed to him in his official dispatches from Calcutta on the subject.

The next witness called was, for the second time,

Mr. MIDDLETON.

Examined by Mr. SHERIDAN.

He was again referred to the Treaty of 78, which he did not *perfectly* recollect: That he was *almost* certain that the Bow Begum was always considered as being under the immediate protection of the East-India Company, which was the reason, *he thought*, for his undertaking her cause. That he had *refreshed his memory* by looking over the Minutes for about a quarter of an hour that morning; but that he was nearly certain he might have had access to them at any time: That as to the Treaty, he considered it as a regular engagement; but could not *exactly* say how; and certainly did not remember positively

sively signing the Treaty at all;—if he did sign it, it was merely as a witness, to make it an instrument, but without any authority from Government.

Amongst other happy questions, was the following to him :

“ Did he recollect any circumstances that *made him forget* one Treaty more than another ? ”

To which the following *oracular answer* was given :—

“ Spoke from probability — without the *least recollection !* ”

Mr. Middleton then proceeded in the same perspicuous manner. He thought he had heard something of the intended impeachment of Mr. Hastings by the House of Commons—but was not certain.—Had furnished Major Scott with the materials for the answer to one charge, and had read it, but did not entirely recollect the contents of it.—Went by accident to Drapers' Hall ; but had received a note from Major Scott, desiring him to call there, in his way into the city, which he did—by accident. This was while Mr. Hastings was in Scotland, and his Defence was preparing. Whether he went with Major Scott to Drapers' Hall—Could not recollect.

After Mess. Sheridan, Burke, and Adam, had sufficiently wasted this evidence, and for which his extreme confusion and embarrassment gave sufficient occasion, he was permitted to retire.

To say the truth, Mr. Middleton seemed to have brought nothing to a certainty. “ *I will not be sure these are my hands,* ” might have been his motto ; and this air of total uncertainty threw a ridicule over his manner and character, which we hear from all quarters he by no means merits.

The Managers proceeded next to give evidence in support of that part of the charge which relates to the removal of Mr. Britton, the Resident appointed by the orders of the Court of Directors to the Vizier's Court ; his re-appointment by the special command of the Directors ; and his final removal by Mr. Hastings, to make way for a creature of his own, in whom he could confide, and by whom his orders would be punctually obeyed.—Mr. Sheridan observed to the Lords, that they would find that when Mr. Hastings thought Mr. Middleton would be a Resident entirely to his mind—he was not mistaken in his man.—Written evidence was given on this subject, consisting of letters of credence given to Mr. Middleton for the Nabob, his mother, Hyder Ally Khan, &c. From these letters it was, that Mr. Sheridan said the Managers would prove, that Mr. Hastings

had so completely taken upon himself all responsibility for the government of Oude, that the acts of Mr. Middleton must in fairness and necessity be imputed to Mr. Hastings.

Early in the day, Mr. Burke informed the Court, that Mr. Goring wished to correct a mistake in the evidence he gave before their Lordships on Tuesday. Mr. Goring was called in, and said, that when he appeared last before the Court, he had said, that when he was at Muxadavad, the Court of the Nabob of Bengal, the widow of the Nabob Surajah Dowlah had not taken any notice, until he had his audience of leave, of the power with which he had informed her he was vested, of removing her forcibly, if she should endeavour to obstruct the negotiation on which he was then employed. In fact, she did take notice of it at the time, and expressed her concern at it ; but he at the same time desired she would not be alarmed, for he would not think of disturbing her, or making any use of his power, except in case of necessity : it was at his audience of leave that she told him, she would have put herself and all the ladies to death, if he had attempted to remove them by force.

He was asked, by the Counsel for Mr. Hastings, if he was sure that there was, at the time of which he was speaking, such a lady in existence, as the widow of Surajah Dowlah, Nabob of Bengal ? He replied, that after he had paid his respects to most of the people of rank in the capital, he received an invitation from an eunuch, calling himself the servant of the widow of Surajah Dowlah ; that he accordingly waited upon her, and found her living in great splendour in a magnificent palace. He could not, of his own knowledge, say whose widow she was ; but she lived like a Princess, had a princely train of servants, and a very grand palace of great extent ; gave him a most magnificent entertainment, and offered him great presents, which he refused, as well as all the other presents that were offered to him during his stay at Muxadavad. He resided in that city for upwards of three months after his introduction to her, and had never heard any one so much as hint that she was not the widow of Surajah Dowlah.—Being examined respecting his power of removing the Begum, he said it was full and explicit ; but as it was discretionary, he certainly would not have put it in force without very strong reasons ; nay, he believed he would on no account have exercised it.

The Court rose at half past five o'clock, and adjourned to the Tuesday following.

TWEN-

TWENTIETH DAY.

TUESDAY, APRIL 29.

Much *written* evidence was received by their Lordships, and some *oral* evidence was given by Mr. Middleton, who underwent a very long examination. Many questions were put to him about the effect of a British Resident's signature to a treaty between two native Princes, or powers, in India. He said, that if the Resident signed a treaty, in consequence of power given to him by the Supreme Council so to do, his signature would amount to a guarantee, and bind the Company; but if he signed it merely in a private capacity, then his signature would NOT bind the Company to guarantee the treaty.

The Managers' reason for examining the witness upon this point was, that he had signed a treaty between the Nabob Vizier and the Begums, his mother and grandmother; and this signing was construed by the Managers to be equivalent to a signing by the Governor-General and Council, whose agent Mr. Middleton was, when he was at the Court of the Vizier, in the character of the Company's Resident.

He was asked, if it was usual for him to produce his powers, whenever he signed a treaty, so that the parties who required his signature might know whether he signed in his public or his private capacity? He replied, that it would be useless for him to produce his powers, because the natives could not understand them; but he presumed that he generally stated to the parties concerned what were his powers. He said, that when he put his name to the treaty between the Nabob Vizier and his mother, he bound the Company, because he had sufficient powers to treat with her and for her; but he did not think that when he signed the treaty relative to the elder Begum, he in any degree bound the Company, because he did not conceive that he had any powers relative to the elder Begum so to do. He was asked, if the Princesses were aware of the distinction between his public and private capacity, at the time he put his name to their treaties? He said he could not tell.—He was asked, whether, when they required his signature, for the purpose of binding the Company by it, they would have sought it at all, if they were told it would not, without a specific power for that purpose, actually bind the Company? He replied, he could not tell.—He was asked, if he had ever told the elder Begum, that he had no power to pledge the Company, by his signature, to guarantee the treaty to which he set his name? He replied, that he believed he had not.—He was asked, if he had wrote to the Governor and

Council, that he would not proceed further in the treaty between the Nabob and the Begums, without having first applied to the Board for advice? He answered in the affirmative.—He was asked, whether he had not signed that treaty without asking the advice of the Council, notwithstanding his assurances to the contrary? This question he answered also in the affirmative.—The Managers then asked, if he had been reprimanded by the Board for this breach of promise? He said he had not.—He was asked, if he knew any instance of a native Prince doubting that the Resident's signature to a treaty was not equivalent to a guarantee on the part of the Company? He said he did; for the younger Begum had sent to Calcutta to have her treaty signed by Mr. Hastings, after it had been signed by the witness, then Resident at Lucknow.—He was asked, if the elder Begum had ever taken such a step, or ever expressed the least doubt of the Resident's signature being equal to a guarantee of the Company? He replied, that certainly she had never taken any such step, or done any thing that indicated a doubt of the Company's being bound by the signature of the Resident.—Mr. Sheridan asked, if he had always been of opinion, that a Resident's signature amounted to a guarantee only when he had specific powers given to him for that purpose? He said, he believed he had.—Here Mr. Sheridan thought it necessary to refresh his memory, by asking him, if he had ever declared any where, that the bare ATTESTATION of Sir Robert Barker to a treaty between two native Princes, had been deemed and received as equivalent to the Company's guarantee? He answered in the affirmative. His reason for entertaining the opinion contained in that declaration was, that Sir Robert Barker was in a very high station, being Commander in Chief.—Mr. Sheridan asked him, if he had always been of opinion, that Princes requiring the signature of a British Resident to a treaty to which the English could not be parties, unless they were to be considered as guarantees, might call upon such Resident to produce the powers under which he acted, that it might be known whether he signed with or without authority, and, consequently, whether the Company were or were not to be made guarantees by his signing? He replied, that he usually mentioned that he had powers (when it happened to be the case) to bind his principals by his signature.—A letter was then produced, written by himself, which strongly expressed his resentment that Fyzoola Khan, the Rohilla Chief, should have questioned his power to bind the Company by his signature to a treaty between the Vizier and Fyzoola Khan.

Khan.—He acknowledged that the letter had been written by him.

Mr. Sheridan several times commented upon the answers given by the witnesses. This made **Mr. Law**, one of the Counsel for **Mr. Hastings**, request, that the Honourable Manager would not make his comments whilst the witness was present—for they would make a confused person still more confused, and shake the confidence of the most confident: and therefore he begged that, even for the sake of humanity, he would wait till the witness should have withdrawn, before he would make any more comments.

Mr. Sheridan said, the Managers were very far from being deficient in humanity; if they had, the manner in which the witnesses gave his evidence, would have made them complain of it to the House, and he made no doubt, but, if they had so complained, their Lordships would readily have taken the conduct of the witness into consideration.

Mr. Sheridan then examined **Mr. Middleton** relative to the condition of the Nabob's finances, and the present of ten lacs, or 100,000*l.* made by that Prince to **Mr. Hastings**. The witness said, that previous to the interview between the Nabob and **Mr. Hastings**, at Chunar, the former was so low in point of finances, that he had never known him poorer: the witness negotiated a loan of ten lacs for him, on his own (**Mr. Middleton's**) credit, when the Nabob's credit was not sufficient to raise such a sum among the bankers. The assignments which the Resident had upon the revenue of Oude, and the claims which he was urging in behalf of the Company, and for which he was pressing the Nabob to grant him more assignments, would cover the whole revenue of the country, and would not leave free even the annual allowance for the support of the Nabob's household.—The Prince wanted to get rid of many expensive establishments, that lay very heavy upon his treasury. These establishments were formed chiefly of English, and **Mr. Hastings** had consented to the suppression of the establishments, and to the dismissal of the English gentlemen; but the Nabob had not money to pay them what was due to them, or credit to raise it. This was the time when **Mr. Middleton** borrowed the ten lacs upon his own credit, and the money so borrowed was for the purpose of paying the English gentlemen, and so easing the Nabob's revenue of many heavy establishments. It was about this time that the Nabob and **Mr. Hastings** met at Chunar: **Mr. Middleton** was there also, and employed occasionally by **Mr. Hastings** in treating with

the Nabob. It was at this period, when the Prince was so very distressed, that he made **Mr. Hastings** a present of ten lacs, or 100,000*l.* sterling. The witness did not hear of that present at Chunar, where it was made, or even in India, nor until he arrived in England.—He was asked by **Mr. Sheridan**, whether it would have been possible that the receipt of such a present could have been concealed from him, who was negotiating between the two parties, if much management had not been used for the purpose of keeping it from his knowledge? He replied, that certainly it must have reached his ears, if great care had not been taken to prevent it. The present, he was sure, was not made in money, because such a sum could not be conveyed to Chunar without his knowledge. It appeared from **Mr. Hastings's** own account of the present, that it was made in bills upon bankers; so that the Nabob, who had not credit enough to raise 100,000*l.* in the capital of his dominions, for the purpose of relieving his revenue from burdensome establishments that impoverished him, was able, his difficulties apparently continuing the same, to raise that sum at Chunar for the purpose of presenting it to **Mr. Hastings** for his own private use. The Counsel for **Mr. Hastings** not denying the receipt of the present, wished to shew that **Mr. Hastings** was so pressed for money for the public service, the Company's troops mutinying for want of pay, that he was warranted by the most pressing necessity to receive a sum of money which might be the absolute salvation of the Company, to whose use he applied the present that was given.—The witness said, he had heard of mutinies among the troops, and their deserting their officers, because they were not paid; and he instanced particularly **Capt. Williams**, who had been so deserted: but he could not tell whether many months arrears were due to the troops at that time, at Chunar, with **Mr. Hastings**: it was usual to keep all the troops some time in arrear.

On the other hand, it was proved by an official letter, that if the Nabob could raise money to pay the arrears of troops, and prevent mutiny, he could employ it at home, without making presents; for it appeared, that the Prince's own cavalry rose upon him, and attempted to storm his palace, because their pay was eighteen months in arrears.

Mr. Sheridan asked the witness, if he had never heard of an offer made to **Mr. Hastings** of a second present, of the same amount as the former? He begged he might be permitted to decline answering that question; for he said, that as he had been accused of having offered **Mr. Hastings** a bribe of 100,000*l.* in the name of the Nabob, he would not with-

to say any thing that might criminate himself. Mr. Sheridan observed, that as he was not charged with having actually given, but with having OFFERED a present, he could not criminate himself by his answer to the question. The witness still declined giving an answer; and the Managers ceased to press him, particularly as the Lord Chancellor observed, that if it was criminal in Mr. Hastings to receive the present, it would be criminal in the witness to offer it.

Mr. Middleton was also examined with respect to a private letter from him to the Governor-General, in which he offered to write another letter, with different accounts of transactions, if the public letter which accompanied the private one should happen not to meet the Governor's approbation. The witness admitted that the letter had been written by him.

The Court adjourned a quarter before six o'clock.

TWENTY-FIRST DAY.

WEDNESDAY, APRIL 30.

The business of this day was resumed by Mr. Sheridan. Several documents were read, relating chiefly to the present of 100,000*l.* made by the Vizier to Mr. Hastings, in the year 1781.

Major Scott underwent a long examination. This witness was a complete contrast to another who has been repeatedly examined: the latter recollected few things; the former remembered every transaction, however minute, in which Mr. Hastings was any way concerned since the time the witness was appointed his Agent. The examination this day turned chiefly upon the presents which Mr. Hastings had received from the Nabob Vizier, Cheyt Sing, &c. The Major in his evidence stated, that Mr. Hastings had transmitted to him a SEALED letter, directed to the Secret Committee of the East-India Company, which he immediately delivered to Sir Henry Fletcher, at that time the Chairman of the Company. This letter, of which a copy was sent either at that time or soon after, contained an account of the present from the Nabob. He was asked, if he had received a general discretionary power in Mr. Hastings, to deliver, or to suppress, letters committed to his care, according to what he should find the state of parties in England. The tendency of this question was to show, that, according to that discretionary power, Major Scott might have suppressed the letter to the Secret Committee, if from the collection of affairs he had judged it expedient so to do, and with it, of course, the information that Mr. Hastings had received this present. But the Major said, that

though his power was generally discretionary, he did not conceive it to extend to the letter which was directed to the Secret Committee, for he believed himself to be peremptorily BOUND to deliver that letter.

He was asked, if he did not learn from a letter directed to himself from Mr. Hastings, that a present of two lakhs, mentioned by the Governor-General to have been received by him, was made by Cheyt Sing, though Mr. Hastings had not, in any of his dispatches to the Court of Directors, told the name of the person from whom he had received that present? The witness answered the question in the affirmative.—He was asked, if Mr. Hastings did not intend at first to keep the receipt of the 100,000*l.* from the Nabob a secret from the Company? He replied, that, in his opinion, he did not; for the expenditure of the sum, applied as it had been to the public use, must have appeared to the Company as exceeding by so much the Company's revenue.

Here a passage from Mr. Hastings's letter from Cheltenham was read, which stated, that he intended to have kept the receipt of the money a secret, and that if he had been inclined to convert it to his own use, he might easily have done so, without any danger of detection. This Major Scott explained, by saying, that Mr. Hastings meant, that he intended to keep a secret FROM WHOM the present had been received, contenting himself with carrying the amount of it to the Company's account.

He was asked, what was Mr. Hastings's reason for having suffered many months to elapse before he made any communication on the subject of those presents to the Court of Directors? The witness answered, that the Governor-General took the earliest opportunity to make that communication. Upon this Mr. Sheridan, who examined Major Scott, produced the India-House accounts of the arrival of the Nymph sloop of war and the Swallow packet, both from Bengal, by neither of which Mr. Hastings had sent any advice of the receipt of the present from the Nabob, though he had received it before the sailing of either. Major Scott observed upon this, that the Nymph had been sent from Madras to Bengal for a supply of money; that when she was ordered back to Madras, some dispatches for Europe were sent in her, and directed to Sir Edward Hughes, with a request that he would transmit them to England by the first vessel he should send home. The Admiral actually dispatched the Nymph to England; but when she left Bengal, on her return to Madras, it was very uncertain when the dispatches which she carried would be sent to Europe. The reason why no ad-

vice respecting the presents was sent by the Swallow was, that the Governor-General and Council were preparing dispatches, which they said they would send by the next ship that would sail after the departure of the Swallow*.

Major Scott was examined very minutely with respect to the contents of the letter to himself from Mr. Hastings, accompanying the SEALED letter already mentioned, directed to the Secret Committee. His answers struck Mr. Sheridan, as differing from those given by the witness to the same questions, when he was examined before the Select Committee of the House of Commons; and he observed, that if he was to believe the former, he could not believe a word of what the witness had said this day on the same subject. Major Scott, upon this, wished that his evidence before the Commons might be read, when it would appear, he said, that he had been uniform and consistent in all the evidence he had given on both occasions. He had nothing to conceal at either time; he meant to speak out; he did not want to shelter himself under the pretence of a short memory, or the distance of periods in which the transactions in question took place: if he had said any thing that was not fairly stated, he would be very glad of an opportunity of correcting it.

The Earl of Fauconberg made some remarks upon the harshness of Mr. Sheridan's

expressions to the witness. The Lord Chancellor said, that the Hon. Manager did not cast any reflection upon the personal honour of the witness; he only remarked some contradiction in the evidence given by him on this and on another occasion, which, in the Hon. Manager's mind, shewed that both accounts could not be true; so that if he believed the one, he could not believe the other. The evidence given by the Major before the Select Committee was then read, and whatever apparent contradiction was found between it and his evidence of this day, the witness endeavoured to explain away, and seemingly not without success.

The closest part of the examination was relative to the contents of the letter accompanying the SEALED one; but Major Scott said, he had the letter by him. Mr. Sheridan thought the best and most legal way would be to call for the letter itself. The witness said, he had but one objection to the production of it, and that was, that there were other matters in it which did not relate to the presents. In his correspondence with Mr. Hastings, he had given his opinions on men and measures pretty freely, and Mr. Hastings, in his replies, had been as free in his remarks: he left it, therefore, with their Lordships to determine whether private correspondence, carried on in any such way, ought to be produced.

Mr. Sheridan said, he would be as delicate

* The whole amount of these presents, so charged, was stated by Major Scott to have been managed with perfect rectitude throughout: From the original receipt of the money, to its final appropriation, Mr. Hastings seemed to have no other purpose than CREDITING THE COMPANY.

The amount of the whole was 19 lacs and 60,000 rupees. Of these, 20,000l. sterling, being particularly circumstanced, had been particularly charged—and in a QUESTIONABLE SHAPE, fairly put before the Directors—they to determine, whether the money should go to the Company's Treasury, or be considered as his own.

The determination of the Directors was against Mr. Hastings having the money; and so, the whole was carried to the Public Account.

In the economy and remittance of this money, there were some intricacies, which Major Scott explained:—In a circuitous use of some of the money, when expedient, as in the expedition of General Carnac:—In the delayed communication of another part, from the unexpected sailing of the Swallow, on the orders of Mr. Wheeler and Sir J. Macpherson when Mr. Hastings was at Lucknow:—In the impossibility, at least in the inexpediency of venturing any thing over-land to Madras, the intermediate country being then harraffed by the enemy:—And, finally, on one portion of the money having been remitted, with some small informality, through Major Scott.

This INFORMALITY being treated more gravely on one side than on the other—Major Scott was asked, If his praise of Mr. Hastings could pretend to be systematic? If Mr. Hastings had not acted, now and then, in contradiction of those orders, it was his business to obey?

To this, the answer of Major Scott was as follows:—

“He thought, the PRIMARY DUTY of the Governor-General was the Preservation of the Empire entrusted to his care.—That he thought, such duty, at once judicial and political, might lead to a Disobedience of any Orders given *in initio*.—And that he thought, for such disobedience a Governor-General was RESPONSIBLE.”

is any man on such a subject ; and therefore he would not desire that any parts of such a correspondence should be read, that really were of a private nature, and did not in any degree relate to the subject of the charge : but then he thought it would be proper that some person should be appointed by their Lordships to peruse the letter, and see that nothing in it, which really related to public business, was kept back under the pretence of its being of a private nature.

It seemed to be allowed on all hands, that the delicacy of withholding what was really of a private nature in the letter was well founded.

Mr. Adam was willing to adopt this idea of delicacy, but the prisoner might consider the adoption of it rather as an *INDULGENCE* than a *RIGHT* ; for it appeared from the prisoner's covenants with the Company (which Mr. Adam read), that he was bound to deliver up to the Company all diaries, memorandums, minutes, &c. relating to the Company's affairs, though they should be mixed with his own most private concerns, or those of others. And when he considered the nature of other presents, upon which the witness had not yet been examined, he did not think that the same delicacy ought to be observed with respect to them, which the Managers were willing to observe this day with respect to the letter in question.

The letter was not called for.

Mr. Law observed to the Court, that one of his client's witnesses, Mr. Graham, was in so bad a state of health, that it was feared he could not live many days ; certainly he could not live to the time when his client would wish to produce him : he therefore wished their Lordships would suffer him to be examined at home. He had submitted the circumstance to the consideration of the Managers, and they had given their consent to the measure. If, therefore, their Lordships should agree to this measure, interrogatories should be drawn up, and sent to the Managers, that they might make out cross-interrogatories upon them. The Counsel for Mr. Hastings would readily consent to a similar measure, if the Managers should have occasion to propose it.—Mr. Sheridan said, the Managers had no objection to the proposal of the learned gentleman ; but it was not on the ground of *RECIPROCITY* that they assented to it. It was certainly a new mode of proceeding in a criminal cause, to which nothing analogous could be found in the Courts below : that, however, was for the consideration of their Lordships ; the Managers, for their part, did not object to it.

The Lord Chancellor said, it certainly was a new proceeding, and he did not yet know

what to say to it. He would consider of it, however ; and their Lordships would, in deliberating upon it, not forget that the consent of both parties was the basis of the application.

When the business had got thus far, their Lordships adjourned.

TWENTY-SECOND DAY.

THURSDAY, MAY 1.

The Lord Chancellor informed the Counsel for Mr. Hastings, that it would require some time for their Lordships to consider of the request made yesterday, " That leave might be given to the defendant, to take the evidence of Mr. Graham at his own house ;" for it did not as yet appear clear to their Lordships, that the Court had power to grant such a request. When they should have further considered the subject, they would direct him, he said, to communicate their determination to the Counsel and to the Managers."

After this, Major Scott was called in and examined relative to the dispatches sent by him over-land to Mr. Hastings, and the expence attending them. He said, that from the year 1782 to 1785, he had sent several dispatches over-land to the then Governor-General (Mr. Hastings) ; that the expences attending the transmission of them amounted to about 6000*l.* sterling ; and that they were defrayed by Mr. Hastings.

This circumstance, the only material one, being ascertained, Mr. Sheridan rose to say, " That having various public letters from Mr. Hastings to adduce in evidence, he would not, if their Lordships approved of it, keep them longer, than by barely reading the heads of them "

To this it was replied by the Chancellor, " That if they were to be brought as evidence, the *WHOLE* must be read."

The Clerk, therefore, again mounted the rostrum, and a course of " Indian Readings" commenced, for the space of two hours, to prove that Mr. Hastings had kept back from the Council at Calcutta the circumstances that had come to his knowledge of the disaffection and treasonable proceedings of the Begums ; that, from the 19th of November, when he concluded the treaty of Chunar, by which these Princesses were to be dispossessed of their landed estates, and for which measure their disaffection was stated as the ground, down to the 20th of January following, he never made the Council at Calcutta acquainted with the treaty, or the grounds on which it had been concluded.

Mr. Middleton was afterwards called in and examined. He said, that he was at Chunar when Mr. Hastings and the Nabob

in person concluded the treaty, which takes its name from that place : that, on the day on which it was executed, he was in the apartment of Mr. Hastings, together with the Nabob and his two Ministers, and some other natives : that whilst Mr. Hastings was at one end of the room, with those natives, he (the witness) was conversing with the Nabob and his Ministers at the other end : that his Highness was very unwilling to set his seal to the treaty, and thereby execute it : that he seemed to think he had made too great concessions in it to Mr. Hastings, and given him too great an authority in his country : that his unwillingness to execute it was at last removed by the witness, who said he thought the treaty would be very advantageous to both parties, without being attended with the least inconvenience to either : that the great object of it being to secure to the Company the payment of the debt due by his Highness to the Company, he assured the Nabob that the Governor-General would not insist rigidly upon the performance of any part of the treaty that was not essentially necessary to that purpose ; and that as Mr. Hastings had made very great concessions to the Nabob, in agreeing that the British and native troops of the Company, then in the pay of his Highness, should be withdrawn, and many establishments made for the provision of English gentlemen, at the expence of the Nabob, should be suppressed, it would be absolutely necessary that Mr. Hastings should have something to shew in return for the sacrifices made by him in the treaty : that under the assurances of the witness, that the whole of the treaty was not to be enforced, and in consequence of the other arguments used by him, the Nabob at last consented to execute the treaty.

Mr. Middleton was asked, if it was not at that time that the present of 100,000*l.* was given to Mr. Hastings ? He said, he did not know, as he had learnt nothing of it till after his arrival in England. He was next asked, whether, if he had known that the present of 100,000*l.* was made at that time, he could not readily have accounted for the concessions made by Mr. Hastings to the Nabob ? He observed, that this was a mere matter of opinion, and therefore he hoped their Lordships would not insist upon his giving an answer to this question. The Court did not disappoint the hope of the witness on the occasion.

He was asked, if all Mr. Hastings's *PRIVATE* letters to him after the treaty of Chunar were recorded by him ? He answered, that all the private letters written by Mr. Hastings to him were upon record. He was to point out *one*. He said, he had

read some this morning in *print* ; but letters in *print* were not admitted to be of *record*. He was asked, if the *PRIVATE* letters of Mr. Hastings to him after the treaty of Chunar did not relate to public business ? He said, that many private letters to him from Mr. Hastings were intermixed with public and private affairs ; but that he believed *all* those that were written after the treaty of Chunar related to *public* affairs. He was asked, if it was not usual with the Residents at Lucknow and elsewhere to copy *all* letters into their official books that related to *public* affairs, together with their *answers* to them ? He admitted, that such was the practice of office. He then was asked, if he had preserved in his office *recorded* official copies of these letters and answers ? He answered, that he had *not*. He observed, that after Mr. Hastings had brought a charge against him at Calcutta, he (Mr. Hastings) published those letters, and that was what he meant by saying they were recorded ; but in point of fact, they did not appear in the Company's records. He was next asked, if he had not corresponded with Sir Elijah Impey on the subject of the treaty of Chunar ? He answered in the affirmative. He was asked, if the correspondence was not of a public nature, and which concerned the Company ? He said, *yes*. He was then asked, if he had copied the letters of that correspondence into his official book, and so recorded them, as was the practice and duty of Residents ? He replied, that he had *not*. He said, that Sir Elijah Impey had since delivered them to the House of Commons. The Managers asked, if the witness had not heard, before the conclusion of the treaty of Chunar, all the circumstances relative to the disaffection of the Begums, and the assistance said to have been given by them to the Rajah Cheyt Sing. He said, he had heard, from common report, that the Begums were disaffected, and had actually raised 1000 men to support Cheyt Sing ; and that the adopted son of Bahar Ally Khan (one of the Begums Ministers) who was Governor of the principal town in the district of the Begums jaghires, had behaved in a hostile manner to the English, which, in the opinion of the witness, he would not have presumed to have done, if he had not been sure of countenance and support from the Ministers of the Begums, and from the Begums themselves. Whatever the witness had heard from common report, he had stated to Mr. Hastings. He was asked, whether common report did not charge the Nabob himself with acting in concert with the Begums, in their hostile dispositions against the English ? He an-

swered, that common report did not go that length; but Col. Hannay, in a letter to the witness, did not hesitate to say it was so understood at Fyzabad (the residence of the Begums). He was asked, if he had not made an affidavit before Sir Elijah Impey of all he knew relative to the Begums? He said he had. He was asked, if he did not know, at the time, that Capt. Gordon had been released by the Begum, and sent under a *protecting* guard to Col. Hannay, and that both Col. Hannay and Capt. Gordon had written letters of thanks to her for her kind treatment of the latter? He answered in the affirmative. The Managers then asked, what was the reason that, when he made the affidavit before Sir Elijah Impey, his memory enabled him to state every thing he had heard *against* the Begums, but did not suggest to him this fact in *favour* of them, and which he had from better authority than common report, namely, the letters of Col. Hannay and Capt. Gordon? His reply was, that he did not think the Begums deserved any thanks for the release of the latter gentleman, as Col. Hannay had informed him that he was obliged to temporize with them, on account of the situation of Capt. Gordon, whose life he thought in danger at the time: that this was the reason for writing in the manner he had done to one of the Begums; and that, after the release of that gentleman, it was thought expedient to keep up the *same* appearance of confidence in her, and therefore it was that the letters of thanks had been sent to her. He was asked, if a Mr. Scott had not a *great* manufacture at that time in the very town of which the adopted son of Bahar Ally Khan was Governor? whether that gentleman had ever been in any danger of his life from the disaffection of the Governor, or ever experienced a want of respect from him, or of protection to his manufacture? and whether it was not at the house of this Mr. Scott that Capt. Gordon was lodged, while he was in that town of which the Governor was represented as acting hostilely against the English, with the encouragement or connivance of his mistress the Begums? He replied, that Mr. Scott certainly had a very great manufacture in that town; that he was never molested by the Governor, or in danger of losing either his life or property; and that his house afforded an asylum to Capt. Gordon. He was afterwards asked, if this same disaffected Governor, acting, as it was said, under the influence of his mistress the Begums, had not been actually delivered up by those Princesses to Mr. Middleton? His answer was, that the Governor had been delivered to the Nabob, who had put him into the hands of

the witness. He was asked, if this man had not been discharged from custody without having received any punishment, though he was charged with treason against the state? Mr. Middleton replied, that he himself had had leave of absence from Lucknow for a month; and Mr. Johnson, his principal assistant, was left to do the duties of Resident in his absence: he understood that, in the mean time, the prisoner had been discharged from his confinement, and he had not heard of any enquiry into his conduct. He was asked, finally, whether Capt. Gordon had not claimed reparation for losses sustained by him in the Begums' country to the amount of 3000*l.* and whether his claim had not been allowed? The witness answered in the affirmative, and was then directed to withdraw.

It was then six o'clock, and their Lordships thought proper to rise and adjourn the Court to the Tuesday following.

TWENTY-THIRD DAY,
TUESDAY, MAY 6.

This day a great deal of written evidence was given in, and read, relative to the Begums; after this,

SIR ELIJAH IMPEY

was called to the bar, and underwent a long examination relative to the affidavits sworn before him, on the subject of the disaffection of the Begums, and the rebellion in Benares.

His answers in substance were, that his leaving Calcutta had not for its object the taking of those affidavits; on the contrary, when he set out on his journey, his sole intention was to visit the country Courts of Justice. Whilst he was on his way, he received a short note from Mr. Hastings, in which he informed him, that an unexpected revolution had happened at Benares; but that he was in such confusion about it, that he could not himself write him any of the particulars of the revolution, for which he referred him to a long letter from Mr. Sullivan (the private Secretary to Mr. Hastings). This long letter was delivered to the witness at the same time with Mr. Hastings's note; the Governor-General, in his note, pressed him much to join him at Benares. The witness hastened to Patna, where the English were in the greatest consternation at the news of the rebellion, and were ready to quit the town. The witness thought it his duty to put on a good countenance; and for the purpose of preventing the alarm from spreading, to stay longer at Patna than was perhaps consistent with his personal safety: when he at last left Patna, he repaired to Mr. Hastings at Benares.

He was asked if, when he took the affidavits respecting the Begums, he conceived himself to be legally empowered to administer an oath? He answered, that he certainly was beyond the bounds of his jurisdiction, when he administered the oaths in question, and was not of course, speaking strictly, legally empowered to administer them; but he was of opinion, that the high office he held in India imposed on him as a duty that he should be ready at all times to serve his country; and he believed, that a more favourable opportunity of so doing had not occurred than that in which he had been invited by Mr. Hastings to co-operate with him in any measure that might tend to secure the then tottering interest of the British Government of India. In taking the affidavits which were made to establish the guilt of the parties at that time in rebellion, he admitted that he had acted without judicial powers; but he could, if the House pressed him so to do, quote the highest authority in this kingdom to prove, that he (the great and noble Magistrate alluded to, who was supposed to be Lord Mansfield) had administered oaths on some great occasions, where he had no local jurisdiction. The witness said, that the only object he had in view at the time, was to attest that the affidavits had been actually sworn; that the deponents had been asked at the time, whether the contents of these affidavits were true, and that they had answered in the affirmative; but as to the truth or falsehood of them, the witness never was able to assert any thing of his own knowledge.

In this part of the business, it was conceived by Sir Elijah, that somewhat had gone, *by insinuation*, against his testimony. His observation on it was in the following spirited and manly form:

"My Lords, I trust it is understood, that I stand here a *voluntary witness*. In my testimony, I am upon oath; I speak to the best of my recollection; and I have a character to support.—That character, the Honourable Managers shall not take away, even *by insinuation*; and I trust, when I use this language, your Lordships will support me.—I might hesitate to answer;—but such hesitation I disdain: I will speak *freely and fairly*; but I will not have words put into my mouth, which I have not uttered.—No man shall insinuate that I am guilty of speaking falsely, till he can prove that I do so!"

The Lords, as by one action, universally nodded approbation. The enquiry went on.

Sir Elijah then deposed, that the rebellion of the Begums, though then quieted, was as

notorious in that country, as the one of 1749 in this—a doubt of it did not exist:—That the part of the country which he went over, was as peaceable as the road to Brentford:—That the common post road went through Fyzabad; but the route he took was round-about—but which he chose, for the purpose of seeing a part of the country, he should never again have an opportunity of viewing:—That his retinue was but small—a surgeon, and three or four servants or Hircars:—That the situation of Mr. Hastings at Lucknow, was peculiar—almost *without a second*:—That he considered it his duty to offer him every assistance in his power.

Here Mr. Burke broke out into an eloquent lamentation.

"O miserable state, cried he, of the East India Company! O abandoned fortune of Mr. Hastings! O fallen lot of England! —when no assistance could be found, but what was to be given by Sir Elijah Impey!—a man who was to act extra-judicially, and in a district where even his judicial capacity had no force."

Being asked, if he had ever had any reason since for believing that the rebellion of the Begums had not taken place? he answered *yes*; he had heard that the Hon. the House of Commons had pronounced the report of the rebellion of the Begums to be ill-founded, and he presumed that the Hon. House had had more information on the subject than he had. He was asked, if he signed the affidavits only as a witness that they had been sworn, might not the attestation of the English Resident have been as effectual for that purpose?—He answered, that he thought it would not; because the Resident was generally understood to be the confidential friend of Mr. Hastings, and therefore his agency would have been suspected. He was asked, if he was sure that Mr. Hastings had published all the affidavits that the witness had taken?—He replied, that he could not tell; but he had such a reliance on the veracity and honour of Mr. Hastings, that he presumed he had published them all. He was next asked, if the character of Mr. Hastings stood so high for veracity and honour, whether the attestation of such a man would not have stamped sufficient authenticity on the affidavits, and rendered it unnecessary, that the Chief Justice should be called upon to administer oaths out of his own jurisdiction?—He replied, that he thought the attestation of a person not connected with the executive government, would have most weight. He was asked, if he had not taken the affidavits relative to the rebellion of the Begums, for the purpose

purpose of justifying Mr. Hastings for plundering these Princesses, and preventing any future enquiry into his conduct on that head?—He answered in the negative; for, though he considered the revolution of Benares to have been of so important a nature, that he thought at the time it would lead to an enquiry into the conduct of the Governor-General, yet the public notoriety of the disaffection of the Begums did not leave him room to think, even for a moment, that the punishment inflicted on these Princesses for their rebellion could ever be made a subject of public enquiry.—He was asked, if he himself had not, by the direction of Mr. Hastings, desired Mr. Middleton to contrive, if possible, to bring the Nabob to make a requisition that he might be permitted to seize the jaghires of his mother and grandmother? On this point the witness could not speak with great certainty; but he was inclined to answer it rather in the negative than in the affirmative.

Mr. Sheridan then read a passage from the second defence of Mr. Hastings, in which the latter gentleman said, that Sir Elijah Impey had been directed to make such a communication to Mr. Middleton. Mr. Sheridan then asked, if the witness disbelieved that assertion? He replied, that probably what Mr. Hastings had written was true, but that he did not recollect that the fact was as it was stated there. Mr. Sheridan then said, that he must conclude the witness contradicted the assertion made by Mr. Hastings. Sir Elijah observed, that he gave his evidence without considering how it would bear on either the charge or the defence; and that it would be for the Court to apply it.—Mr. Sheridan said, that he would prove hereafter, to the entire satisfaction of their Lordships, that the Nabob had been urged and pressed on the part of Mr. Hastings to make a requisition for leave to resume the Begums jaghires; that he at length did make the desired requisition in form, and that Mr. Hastings had acted as if such requisition had been made freely and voluntarily by the Nabob.

At the conclusion of his evidence, Sir Elijah Impey used the following words:

“It has been objected to me as a crime, my Lords, that I stepped out of my official line, in the business of the affidavits; that I acted as the Secretary of Mr. Hastings. I did so. But I trust it is not in one solitary instance that I have done more than mere duty might require. The records of the East India Company; the minutes of the House of Commons; the recollection of various inhabitants of India—all, all, I trust, will prove that I never have been wanting to what I held was the service of

“my country. I have said, when personal safety might have whispered, “there is no occasion for your delay!” I have gone forth—when individual ease might have said—“Stay at home!” I have advised, when I might coldly have denied my advice. But, I thank God, recollection does not raise a blush at the part I took; and what I then did, I am not now ashamed to mention!”

At half past five the Managers seemed to think they had heard enough from Sir Elijah.

Various Lords put different questions: Lords Suffolk, Carlisle, Stanhope, Walsingham, Kinnaird, and Portchester, the latter of whom used a word from the witness, viz. *segregate*.

The Court was very numerously attended.

TWENTY-FOURTH DAY.

WEDNESDAY, MAY 7.

This day a great deal of written evidence was produced to shew what excesses had been committed by the English stationed in Oude, upon the inhabitants of that country: one paper stated, that one morning an English officer had caused the heads of eighteen natives to be struck off.

A letter was next read to disprove the assertion made by Mr. Hastings in his defence, that he had left the territory of Oude in a flourishing condition. This letter was from Lord Cornwallis—it stated, that on his visit to Lucknow he was received by the Vizier with every mark of respect and attention; but that he was shocked at the deplorable appearance of the country and the people: that he exhorted the Nabob in the most urgent manner to adopt a system of oeconomy in the expenditure of the revenue, and to lay down fixed principles of government for the happiness and advantage of his subjects. That the Vizier replied, he had no interest in establishing a system of oeconomy, while the influence of the English Government ruled every thing about his Court and in his dominions; and that for him to attempt a new system of government, under such circumstances, would be absurd, as his authority was laughed at and despised by his subjects, who looked upon him as a cypher; but that if the English were to suffer him to be the master of his dominions, he would become truly economical, and lay down plans for the improvement of the commerce and encouragement of the agriculture of his people.

Another letter from Lord Cornwallis stated, that his Lordship had seen some of the cavalry, and other parts of the army of Oude,

Qude, but that he had found them such as it would not be safe for a General to place much dependence upon; and, indeed, from all he had seen of the country, that it would be impossible for the Company, in case of a war, to draw any assistance from it.

A letter from Mr. Kirkpatrick was read, to contradict another assertion in the defence made by Mr. Hastings, namely, that the Princes of India had a high opinion of his good faith; and that Madajee Scindia had written a letter to our most Gracious Sovereign, in which he bestowed the highest praise on Mr. Hastings, and seemed to have nothing more to ask, than that those who should succeed him in his government might follow his example. Mr. Kirkpatrick's letter, which was addressed to Lord Cornwallis, assured that the natives had experienced so many breaches of faith on the part of the English, that it would be a very difficult matter to prevail upon them ever to place confidence in our promises or engagements; and therefore, however sincere Government might be in their intention to be faithful to their engagements, nothing but time and some more happy experience of a change in our measures, could make the natives place any confidence in our assurances. This letter of Mr. Kirkpatrick was the more remarkable, as it was written from the country of Madajee Scindia, the Mahratta Prince, who, according to the defence of Mr. Hastings, had so great a reliance upon the faith of his government, that he wished all future Governors of Bengal might adhere as religiously to their engagements as Mr. Hastings had to his.

The Managers having gone through this written evidence, desired that

MR. MIDDLETON

should be called to the bar. This gentleman having made his appearance, underwent a long examination on the subject of the seizure of the Begum's jaghires, and their treasure, &c. &c. He was asked how long the rebellion of the Begums, such as he supposed it to be, had lasted? He said he believed the period of its duration might have been from the same period in the month of August, at which Cheyt Sing broke out into rebellion, to the latter end of September.—This question was thought to be the more material, as the Begums were not stripped of their jaghires till the December following, near three months after the conclusion of the supposed rebellion, though that rebellion had since been made the ground or cause for which these jaghires were seized.

He was asked, if Sir Elijah Impey had communicated to him the pleasure of Mr. Hastings relative to the resumption of the

jaghires? He believed he might have conversed with Sir Elijah on the subject. A passage from one of his own letters was then read to him, in these words:—"Your pleasure I have learned from Sir Elijah Impey relative to the Begums, and I shall take care to use every influence with the Nabob to second your views." He acknowledged that he had written the letter in which that passage was to be found. The object of the Managers in examining the witness to this point was, to shew that the plan for seizing upon the treasures of the Begums, had originated with Mr. Hastings, and not with the Nabob.

The Managers then read a letter from the Bow Begum, or princess's mother, to Mr. Bristow, stating the hardships of her situation, the calumnies of her enemies, and her own innocence, and calling upon the English for that protection, which by treaty they were bound to afford her. Other letters were read, written by Lieutenant-Colonel Hannay and Capt. Gordon, to the Begum, and her Ministers Bahar and Jewar Ally Khan, thanking them for their kind interposition, which had saved the life of Capt. Gordon. The Counsel for Mr. Hastings objected to the admission of these letters as evidence, because printed copies of letters were not evidence, whilst the originals could be obtained; but still less were they evidence in the present case, as the writer, or supposed writer of some of them, was in London; and the Managers ought, in point of candour, to call upon him to state whether these were copies of letters that had really been written by him.

Mr. Sheridan said, it was impossible for him to produce the writers of these letters, because one of them was the younger Begum, who was in India, and could not be brought to this country; another of them (Col. Hannay) was dead; and as for the third, Capt. Gordon, he did not think proper to call him, though he should be on the spot; for notwithstanding the many expressions in his letters of gratitude to the Begum and her Ministers, for the preservation of his life, this gentleman had not thought proper to take the least notice of so remarkable a circumstance in his deposition, or affidavit, before Sir Elijah Impey. But it was not necessary that he should produce either the originals, or the writers of these letters; they had been printed and annexed to one of the charges against Mr. Hastings, to which charge that gentleman had been admitted to make a defence at the bar of the House of Commons; and in that defence he admitted these very letters to be genuine, and the printed copies to be faithful.

Mr.

Mr. Law said, that the Commons might prove that such had been annexed to the charge in the Commons, and that Mr. Hastings had argued upon them as if they were genuine, but not admitting them to be so; and after the Managers should have proved this, he would contend that the evidence of facts so proved was not admissible against the defendant.

Mr. Burke said, it was a hard thing for the Commons to proceed under the various disadvantages which naturally arose out of the delinquency of the prisoner at the bar. One of the charges against him was, that he had suppressed letters which he was bound in duty to have recorded, and which, if he had, would be evidence for their Lordships: but now that he had violated his duty, and suppressed correspondence, his Counsel triumphantly called out for the original letters: this was making the prisoner avail himself of his own wrong, contrary to all principles of justice.—The Managers proceeded to prove, that these letters had been printed and annexed to a charge in the House of Commons, to which Mr. Hastings had made a defence; and a passage from that defence was read, to prove that he had admitted these letters to be genuine. They were accordingly read, and taken down upon their Lordships' minutes.

After this, Mr. Law observed, that as it did not appear from any evidence given by the Managers, that these letters had ever reached the hands of Mr. Hastings, he hoped the Hon. Manager who had charged him with having suppressed letters, would in candour and justice to the gentleman at the bar retract his assertion.

Mr. Burke, assuming all the dignity of situation belonging to a person acting for and representing the Commons of England, replied, "MY LORDS, THE COUNSEL DESERVES NO ANSWER."

Mr. Sheridan proved, that some of the most material evidence relative to the Begums, had been actually suppressed; for he stated from written documents, the authenticity of which had been previously established, that Goulas Roy (a man who had resided in Oude, and was best acquainted with all that belonged to the conduct of the Begums) had been sent to Benares to make his deposition; and that after he had made it, he was sent home:—but, said Mr. Sheridan, not the least notice or account of this deposition of Goulas Roy was to be found in the collection of affidavits taken by Sir Elijah Impey.

The Managers then continued the examination of Mr. Middleton. His books of correspondence were produced; and it appeared, that many pages were torn out, and

others were added, which were loose, not being sewed or bound up with the rest. One of the books appeared to be numbered or paged in his way: A subject was carried on and passed in regular order; when that subject was ended, another began again with No. 1, 2, 3, &c. so that page 1 occurred more than once in the same volume. Now a great number of leaves were torn out, and the next page to those that had been so torn bore the No. 1, and thus went on regularly; so that a whole history of any one transaction might have been thus destroyed. The leaves so torn off had been bound up with the rest, and the threads of the binding from which they had been torn remained.

Mr. Middleton was not able to account for this lacerated state of his books.

He was then asked, if the Nabob had been always inclined to take from his parents their jaghires and estates? He said, he believed he was ever inclined to do so, but had been withheld by his dread of the English, whose faith was pledged to guarantee to the Pow Begum, at least, those jaghires and treasures. He was asked next, how he could, in one of his letters to Mr. Hastings, state, that he had an *almost unconquerable reluctance to the measure*? He did recollect that he had made use of that expression. The expression appeared in a letter of Mr. Hastings to Mr. Middleton, in which the former adverts to and repeats this expression, as taken from a preceding letter from Mr. Middleton to the Governor-General. This letter of the witness, to which Mr. Hastings referred, was not to be found, and was by the Managers said to be one of the many that had been destroyed or suppressed. Another letter, from the Nabob, which Mr. Middleton said he dispatched to Mr. Hastings, and which related to the resumption of the jaghires and treasures, was not to be found upon record, but was also suppressed or lost.

Mr. Middleton was asked, whether Mr. Hastings would not have caused the jaghires to be seized, whether the Nabob had consented or not? He said, he believed he would. He was asked, if he himself (the witness) had not issued *his own* orders, or *perwannahs*, for that purpose, without waiting for the consent of the Nabob? He replied, that certainly he had signed and sealed some of these *perwannahs*, and delivered them to the Minister, but he did not believe they had been dispatched by him before the Nabob signed *perwannahs* for the same purpose. He was asked, if the Nabob had not at the time declared, that his so signing was an *act of compulsion*? This Mr. Middleton admitted. He was then called upon to say, how he could assert that the Nabob had been always inclined

inclined to resume the jaghires, and would have done it if he had not been withheld by the English guarantee? The answer we were not well able to understand; the witness said something about the Nabob's wishing to resume only *some* jaghires, but Mr. Hastings would have him resume *all*.

He was asked, if the second article of the treaty of Chunar did not leave the Nabob at liberty to resume such jaghires as he should think proper to resume? He said, it did. He was asked then, if the meaning of that article was, that the Nabob should resume those that he did not think proper to resume? He replied in the negative. He was desired then to reconcile, if he could, a treaty which gave the Nabob *leave* to resume *such* as he should *please*, with an *order* that he *should* resume such jaghires as he *wished* not to possess himself; nay, that he should resume *all*. Mr. Middleton admitted, that upon the face of the treaty, the order just mentioned and the treaty itself were irreconcilable. He said, however, that from the beginning he had told the Nabob that he must resume *all* the jaghires.

Mr. Sheridan contended, that in this the witness had flatly contradicted what he had said on a preceding day on the same subject, when it appeared from his evidence, that the Nabob's reluctance had been expressed when the resumption of the Begums' jaghires was mentioned to him; for at that time the resumption of no other jaghires had been so much as hinted to him. The former evidence was read, and Mr. Middleton was en-

deavouring to reconcile* what he had said, when the Lord Chancellor observed, that the discussion of this point might take up much time, and it was then near six o'clock†. The point was then dropped, and their Lordships adjourned.

TWENTY-FIFTH DAY.

THURSDAY, MAY 8.

Mr. Middleton was called again to the bar this day, and his examination and cross-examination lasted till the rising of the Court, at half past five o'clock. It appeared, from one of his letters, that a man was kept in the Company's pay, at Fyzabad, for the purpose of forwarding such letters as might be addressed to the Resident at Lucknow, and of transmitting whatever intelligence should come to his knowledge, that was in any degree important. He was asked, what was the name of this man? He said, it was *Goulasi Roy*. He was asked, if this man had not been sent to Benares to depose whatever he had heard relative to the rebellion of the Begums, being supposed to be well acquainted with every thing that had passed at Fyzabad? On this point the witness was not able to speak with any certainty. A passage of a letter was then read to him, written by Major Davy, informing him that Goulasi Roy having been examined, and his deposition taken, relative to the rebellion of the Begums, had been sent back to Fyzabad. He was then asked, why this deposition did not appear among the other affidavits? He replied, that he did not know until he heard

* They who look for every witness to deliver himself with such perspicuity and address as Sir Elijah Impey and Major Scott, will look more often than they find. How intellectual Mr. Middleton may be, seems pretty obvious. And yet in Westminster, as elsewhere, things are not always as they seem. Ignorance may be loquacious, and genius mute. Sir W. Yonge, of George the Second's time, had the trick, without three ideas in continuity, to talk himself into 3000*l.* a-year! while Pope, when appearing for his friend Atterbury, faltered into forgetfulness of all his fine powers—and in the few short lines which formed his testimony, he committed as many transgressions against grammar!

Mr. Middleton is not meant further to be likened to Pope.—Wits may have short memories. It would be well if each short memory had wit. If it was so, embarrassment had been changed into self-possession, and we should have splendour in the place of obscurity.

Mr. Middleton was more agitated, and therefore more confused, than ever. The questions put to him, he apprehended tardily; and his answers often were so perplexed, as to make them yet more tardily apprehended in return.

In the course of this prolix detail, Mr. Sheridan managed most of the matter. A few questions came from Mr. Fox; and when Mr. Adam let fall a few words on their side, protecting their witness, the Chancellor very properly let him know, that "every witness is in the protection of the Court."

The word "CAUTION" appearing in some of the Benares papers—Mr. Burke, with his wonted promptitude and force, observed on its peculiarity—"That this was a flower not likely to have been gathered among Oriental growths; but that it was to be traced as springing on very different ground." Then flinging away his flower, he said, "it smelt of the cask."

† The Court was very thin—scarcely ten women of fashion, and not twenty of the Commons!

this

this letter read, that Goulash Roy had been examined, and therefore he was not able to account for the non-appearance of his deposition: nor did he know any native by name, who had made an affidavit before Sir Elijah Impey. He shewed Col. Hannay his orders from Mr. Hastings, to find out who knew any thing relative to the conduct of the Begums; and as the persons who were most likely to know such things, were native officers in Col. Hannay's regiment, he left it to him to find them out. He was asked, if Col. Hannay was not accused by the Begums with having occasioned all the disturbances in Oude? He replied, that he believed the Begums had made such an accusation. Mr. Burke then desired the witness would say, whether he thought it was decent or just to commit to a person so accused, the charge of finding out witnesses to blacken his accusers? He said, he did not commit such a charge to him; he barely communicated to him the orders which the Governor-General had sent to the witness.

Mr. Law asked, if the jaghire left by the late Nabob to the Bow Begum was considerable? He replied, that, in his opinion, it was not worth more than two lacks of rupees a year; but that her son, the present Nabob, had given her other jaghires, making her whole income *six lacks* a year. He was asked, whether the Begum was not reputed to have had a large, and what, sum in her possession at the time of her husband's death? He replied, that it was computed she had two crores, or 2,000,000l. This treasure he conceived to be the inheritance of the present Nabob, though it was in the Zenana; for the late Nabob resided at Fyzabad, where his widow still resides, and he had no other treasure than that which was deposited in the Begum's Palace. He considered the Begum only as the Nabob's treasurer, and not the owner of the wealth: and a circumstance had occurred which induced him to form this opinion. When the late Nabob was prosecuting the Rohilla war, he gave the witness a draft for 15 lacks, to be paid out of this treasure at Fyzabad; the draft, however, was not honoured: the Begum, who was at that time with him in the camp, then drew for the same sum, and her draft was immediately paid. Mr. Sheridan asked, if this fact did not prove directly the reverse? for as the Nabob's order for the money had been disregarded, and the Begum's duly honoured, it would appear that the fund upon which both had drawn belonged to the Begum, and not to her son.

Mr. Sheridan, in order to shew that the treasures left by Sujah ul Dowlah could not be so great as the witness had thought them

to be, asked what was the sum that the late Nabob was to pay for our assistance in EXTERMINATING the ROHILLAS? The witness replied, forty lacks; fifteen were paid before the death of the Nabob, and since that period the Begums had paid fifty-six lacks, 560,000l. Mr. Sheridan left it then to their Lordships to judge, whether she could have 2,000,000l. sterling in the Zenana.

Mr. Law asked, whether the Begums had not a considerable body of troops in their jaghires? whether they were not independent of the Nabob? whether the Begums Ministers did not frequently oppose the Nabob's officers? whether his Highness had not frequently expressed a wish that the jaghires of his parents were resumed? and whether he had not complained, that two rulers, meaning himself and his mother, were too many for one country? The witness replied, that the Begums had troops, which were certainly independent of the Nabob, whose officers had often been resisted by them, under the orders of Bahar and Jewar Ally Chan, the Begums Ministers; and for these and other reasons, he would have resumed the jaghires, if he had not been withheld by the English guarantee; but he did not recollect precisely that he had heard him say, "two rulers were too many for one country."

In answer to some questions put to him by Mr. Sheridan, he said, that every person holding a jaghire was obliged to have troops; that they were necessary for the collection of the revenue; that the Nabob had frequently attempted to encroach upon the jaghires of his parents, whose Ministers, as they were in duty bound, resisted the encroachments; and this discharge of their duty was, he believed, one of the reasons that made the Nabob dislike them.

Mr. Sheridan then undertook to substantiate, that the keeping the Nabob's family, portioning the daughters, &c. &c. was always thought to be a necessary part of his allowance: That he had complained of the English, as the source of all his difficulties: That two gentlemen were mentioned—whom Mr. Middleton did not remember, though he recollected they were named in the letter—These two gentlemen proved to be Mr. Bristow and Mr. Middleton—the former of whom, Mr. Burke observed, "had the politics, the latter the money."

The letter was read by the Clerk.

Mr. Law here observed, they could not get access to these letters, as they were taken away each night by the Hon. Managers.

The Lord Chancellor, with that perspicuity which discriminates on, and knows every

every thing, said, "They were, or should be, deposited in the Parliament Office—that *both parties* should have access to them, when found necessary, but that *neither* should remove them at their pleasure."

Mr. Sheridan asked the witness, whether, after the late Nabob had been defeated by the English at the battle of Buxar, the Begum had not repaired to him with all her treasure? He replied, that she had repaired to him, and had carried with her valuable effects, on which she raised great sums for his use; and this mark of fidelity and attachment to her husband, in the critical moment of his distress, was, the witness admitted, the foundation of the unbounded love he ever after entertained for her. The witness also admitted, that he had heard the Begum had prevented her husband from putting his son, the present Nabob, to death; and had, by her great influence over her husband, prevailed upon him to single her son out from all his other children, and constitute him his heir.—This evidence was given to prove, that if these Princes had greatly enriched the Begum through gratitude, it would not be fair to say that they did not give her a *property* in the wealth, and more particularly, as the Begums were obliged to support the family and children of the late Nabob, and give them fortunes on their marriage.

Mr. Sheridan asked the witness, if all the articles of the treaty of Chunar had been faithfully observed by the English? He replied, that he could not answer the question, unless he was to read the whole treaty, and all the correspondence. Mr. Sheridan then said, he could ask him a more simple question—Had *any one* article of that treaty been kept? The witness could not tell. Mr. Sheridan asked him, if *any* articles of it had been kept except those which were disagreeable to the Nabob, and which the witness had assured that Prince, Mr. Hastings never intended should be enforced? The Counsel said, the question was too broad. Mr. Sheridan said, he did not mean to press the witness to answer it.

But he would ask this question—At what period had the Nabob stipulated that the temporary brigade belonging to the Company, and then in his service, should be withdrawn? The witness replied, that it was on the 19th of September.

Mr. Sheridan upon this remarked, that this was the very period when the supposed rebellion of the Begums was raging. He left it to their Lordships to judge, whether the Nabob would insist, that the only troops on which he could depend should be dismissed, *aggravante bello*, just at the moment, when, if

such a war was actually existing, he had the greatest occasion for their services.

A very long examination then took place on the subject of the witness's books of correspondence. The last letter in one of these books, written on a sheet bound up with the rest of the book, was dated the 19th of October; immediately follow some loose sheets, not bound up; and on the first of them is another letter, bearing date also the 19th of October. These two letters were not copied at the same time, or on the same kind of paper; for these two sheets, though immediately following each other, have different *water marks*. Now the former of the two letters, bearing the same date, was written by Major Gilpin to Mr. Middleton, and inclosed copies from the Bow Begum of the letters that had been sent to her by Col. Hannay and Capt. Gordon. But these copies should have been inserted in the official book, immediately after the letter from Major Gilpin, in which they had been inclosed.—Mr. Middleton said he had left copies of them in the office.

Lord Loughborough asked, why he had not sent these copies to Calcutta, particularly as the Begum had requested that he would send them as instruments of her defence, and vouchers of her innocence? He said, he was then retiring from his office, and transferring the duties of the Resident to Mr. Bristow, previous to his departure for Calcutta.—The noble and learned Lord asked, why he had not carried with him letters of so much importance, and delivered them to the Governor on his arrival at Calcutta?—He did not think it was necessary; he presumed his successor in office would send them.

Lord Loughborough observed, that it appeared from a letter from Mr. Hastings to the witness, that he was directed by the former to enquire who were able to give any evidence relative to the disaffection of the Begums; to desire that they would make depositions of all they knew; that they should be very particular as to *dates* and *places*; that no deposition should be drawn up in a language which the deponent did not understand; and that persons should be present, who should take care that the deponents were duly sworn, according to the forms prescribed by their respective religions for taking oaths; or if any should scruple to take an oath, that their affirmation should be taken with the usual solemnity.—Now the learned Lord wished to know, if the witness could say, after the receipt of such a letter, that he did not know, of his own knowledge, that any native had made an affidavit? Mr. Middleton replied, that he had shewn the letter to Colonel Hannay, Major

Major Macdonald, and Captain Gordon, and had left it to them to follow them.

The noble Lord asked, if these gentlemen could speak the Persian language? He said Captain Gordon could, but he believed the others could barely understand it, if it was read to them. Lord Loughborough asked, how he could commit to others the discharge of a duty imposed upon himself, and for which those others were not at all qualified? He could not tell why he had done so. He was asked, if he had appointed proxies to seize the Begums treasure, or whether in that case he had executed in person the orders of the Governor-General? He admitted that these orders he had carried into execution in person.

He was afterwards very closely examined by Lords Loughborough, Stormont, Stanhope, and Hopetoun, about the mutilated state of his books. He said, he never intended to say they were perfect copies, he had them taken only for his own private use, he had lent them while at Calcutta to Mr. Johnson, who wanted some letters in it for his defence against a charge brought against him by the Governor-General. He admitted that it appeared that leaves had been torn out of them; but he declared, that this had not been done by him, or with his consent, or even knowledge.

One very remarkable circumstance in this case is, that one of the letters copied in a loose sheet, is in the hand-writing of *two different persons*, and it was admitted by the witnesses, that one part was copied at Lucknow, the other at Calcutta; and if this letter was copied from the original book left in the Resident's office at Lucknow, it was incomprehensible how part of it could have been copied at Calcutta.

With this examination the business of the day terminated, and the Court adjourned, at half past five o'clock, until May 20.

TWENTY-SIXTH DAY.

TUESDAY, MAY 20.

After an adjournment of ten days, during the Whitsun holidays, the Court again resumed its functions in all due form. At twelve o'clock, Mr. Burke called upon the Clerk to read some Persian Correspondence, consisting of letters from Hyder Beg, the Vizier, the Nabob, and from the Governor-General.

After these had lasted nearly two hours, Mr. Burke wished to corroborate the evidence already adduced, by an extract from a Persian Newspaper! The weight which this might have, seemed at first to be uncertain, as a record in a Court of Justice; but the Manager declared it had great authenti-

city, and the Clerk finished the Newspaper.

Mr. Sheridan then proceeded to declare to their Lordships, that the Managers intended to produce evidence to prove, that the Nabob Vizier was a mere cypher in his own dominions, and that the government of them, though nominally in that Prince, was really and effectually in the East-India Company; and consequently, that Mr. Hastings was responsible for the mal-administration of the provinces of Oude, while he was the representative of the Company, as their Governor-General.

He observed to their Lordships, that it was the more necessary he should relate these circumstances, as Mr. Hastings had asserted in his defence, that "It was not true that the Nabob of Oude was ever under the controul of the Bengal Government in the extent stated in the charge:—That the Resident, who represented the Council-General, had an influence at his Court, could not be disputed; but that it was notorious, that the acts of the Nabob's Government were, on various occasions, remonstrated against, and ineffectually opposed by the Resident, as might be seen by the public correspondence of Messrs. Middleton and Bristow:—That it could not, therefore, be admitted that the English name and character were concerned in every act of his government, or in any not authorized by them."

Mr. Sheridan said, he trusted that the Managers would be able to prove, to the satisfaction of the Court, that the English name and character were really and truly concerned in every act of the government of Oude.

The proofs produced were authentic written documents from the records of the India-House. From these it appeared, that even prior to the time when Mr. Hastings was appointed Governor-General, the Nabob of Oude was entirely dependent upon the Company; and that the prisoner had afterwards so far degraded him, as to leave him nothing more than the name of a Sovereign: that whatever favourite Minister the Governor-General desired he would remove, he had immediately removed; and that he raised to the rank of Ministers those whom Mr. Hastings was pleased to recommend, or rather to appoint. Letters were produced from the Ministers who had been appointed on the recommendation, or rather nomination, of Mr. Hastings, returning that gentleman thanks for their appointment, and acknowledging themselves to have derived their then situation from him. The Manager proved, by other letters, that the neighbouring Princes

considered the English as the *masters* and *ru-
lers*, not the *protectors* or *allies*, of the Nabob
of Oude. A letter from Fyzoola Khan, the
only remaining Prince or Chief of the Ro-
hillas, to the Governor and Council, shew-
ed, that the once flourishing country of
Rohiland was running fast to decay; that
thousands of villages in it had been deserted;
and that if some remedy was not speedily
applied by the Company, the whole country
would, in a year or two, be reduced to a
wilderness. Fyzoola Khan stated, in this
letter, that it was his regard for the Com-
pany, and its honour, that made him write
upon a subject in which he had no longer any
personal concern.

Other letters were produced from Persian
Newspapers, published by authority, like the
London Gazette, and recorded by Mr. Hafl-
ings himself, which proved that other neigh-
bouring Princes, and particularly the Em-
peror of Hindostan, looked upon the Go-
vernor-General as the real Sovereign of
Oude. Letters from the Nabob himself
clearly proved the sense he entertained of his
own little weight in the government of his
own country; for he said he would leave it
entirely, and go to the Governor-General,
and reside with him. But no proof was so
strong as a letter from Mr. Haflings himself
to Mr. Bristow, the English Resident at
Lucknow; in which, complaining of Hyder
Beg Khan, Minister to the Nabob, whom
in other respects he before, and ever since,
supported against his master, he makes use
of the following contemptuous language of
the Prince himself:—"By an abuse of his
influence over the Nabob, he (the Nabob
himself) being (*as he ever must be*) in the
hands of some person a MERE CYPHER,
in his (the Minister's) DARED to make
him (the Nabob) ASSUME a very UNBEE-
COMING tone of refusal, reproach, and
resentment, in opposition to measures re-
commended by ME, and even to acts done by
MY authority."

It was proved, that the measure of sta-
tioning a brigade of the Company's troops
in Oude, at the expence of the Nabob, but
paid by him through the Company, and go-
vernied by him, had been opposed in the Su-
preme Council, and that Mr. Francis and
Sir John Clavering had both protested against
it. The protest of the former was very
short. It stated, that such a measure must
necessarily appear to all surrounding nations
as compulsory, because it was not in nature,
that an independent Prince should voluntarily
agree to a measure that virtually DETHRONED
him. Sir John Clavering protested against
it, because the taking from a Sovereign
Prince the government of his subjects, and

the entire dominion over his army, was
contrary to the laws of justice and of na-
tions.

After the documents by which these dif-
ferent points were established, had been read,
Mr. Sheridan informed their Lordships, that
the Managers intended to give some *parole*
evidence, to prove that the charge brought
against the Begums, of their having rebel-
liously joined Cheyt Sing, was totally
groundless; and that it was a calumny pro-
pagated for the purpose of giving a colour to
the infamous act of plundering these Prin-
cesses: for this purpose Mr. Sheridan desired that

Captain EDWARDS
might be called in.

From the testimony of this gentleman it
appeared, that he had been between *seven*
and *eight* years in Oude, in a military capa-
city; and that for the latter part of the
time he had been Aid de Camp to the Na-
bob, and constantly about his person. He
attended his Highness from Lucknow to
Chunar, when the Prince joined Mr. Hafl-
ings at that place. The Nabob, hearing
that Cheyt Sing had taken arms against the
Company, and that the Governor-General
was reduced to great straits, posted from
Lucknow with all the cavalry and infantry
he could muster, and sent orders to all the
other troops he could spare from other quar-
ters, to join him at Chunar. Captain Ed-
wards attended the Nabob to Chunar; but
neither at that place, or on his way to it, had
he ever heard a word of the disaffection of
the Begums, or of their being in arms; and
he was very sure, that if common report
had stated them to be disaffected at the time,
and in arms, such report must have reached
his ears; but he never heard any thing of
the kind whilst he was at Chunar, nor for
above a fortnight after he had left it.

On the Nabob's return to Lucknow, the
witness attended him. When they had got
within a short distance of that capital, the
Nabob, with Mr. Middleton, and the Mi-
nister Hyder Beg Khan, turned off to Fyza-
bad, and the witness went on to Lucknow.
The Nabob travelled so fast, by means of
relays of elephants (on which he had heard
he had travelled near 60 miles in one day)
that he could not take his infantry with him;
nor had his cavalry been able to keep up
with him; so that in fact he arrived at the
residence of his mother and grandmother
without any troops at all. The rabble and
camp-followers of the Nabob might amount
to about 30,000. [N. B. This was at the
time when Mr. Haflings would have it be-
lieved that the Begums were in rebellion;
and though it was said that the Begums in-
tended

tended to dethrone their son, yet he without hesitation paid them a visit without a guard.]

The witness said, that when he first heard of the charge of rebellion brought against the Begums, the report was, that they intended to drive the English out of the country, dethrone the Nabob, and place a more favoured brother, Saadit Ally, on the throne. The Nabob, he believed, had not heard of this report at Chunar, or for a long time after; for he was sure that if he had heard of it, he would have been the first to take the alarm, on account of the danger which threatened him personally, and would have immediately communicated the alarm to the English; but he, in fact, did no such thing. Had the whole of this regular cavalry, that attended the Nabob when the witness and he parted, accompanied him all the way to Fyzabad, it would have been found to be greatly inadequate to the task of defending his person against an attack from the troops of the Begums, if any attack had been made; for the number consisted of no more than 600, badly mounted, badly accoutred, almost naked, and ill paid: their pay was 15 or 16 months in arrear; they were disaffected on that account, and he had known them refuse to go upon service, because they were not paid: in a word, they were troops on which no dependence could have been placed; but had they been the best in the world, they could not have preserved the Nabob's person from danger at Fyzabad, if it had been in any; for his Highness had out-travelled them, and left them on the road behind him.

The witness was examined next as to the state of the country in 1774, under the late Nabob Sujah ul Dowlah, and in the year 1783, under his son, the present Nabob, Asoph ul Dowlah. He said, that at the former period, the country was in a most flourishing condition, as well in point of agriculture, as of manufactures and commerce, and the people were in a state of happiness and prosperity. But at the latter period, the country, in many places, bore the strongest marks of depolation; and the inhabitants, reduced to poverty and wretchedness, were obliged to abandon their homes, and fly from the places of their nativity. He said, that he had heard from common fame, that the people ascribed their distresses to the oppressions of Lieut. Col. Hannay. He was asked, if he believed common fame had carried the tidings of these oppressions to the ears of Mr. Hastings? He answered, that he was inclined to think it had not; for he believed, that had Mr. Hastings heard of oppressions, he would instantly have removed the author of them. He was asked, whether the depolation of the country had not been occasioned

by the long drought with which the provinces of Oude had been afflicted? He replied, that it had not; for during the whole of his residence in that country he had never heard of a drought; nor did the people depend so much upon rain for fertilizing their fields, as upon waters preserved by them in wells, and collected from different rivers.

This witness being done with by the Counsel, different Lords asked him questions—Lords Porchester, Hawke, &c. The latter asked much about the attendance on the Nabob's *hunting*, in order to ascertain the numbers of the troops that followed him.

Mr. Sheridan and the Court having done with Capt. Edwards, the former desired that Colonel ACHMUTY might be called.

This gentleman had a command in a place 300 miles distant from Fyzabad, and therefore he could say nothing of his own knowledge about the rebellion of the Begums. He could only speak, he said, from report to the transactions at Fyzabad and Benares, on account of the distance between those places and his station. Being asked what that distance was? he excited a smile more than once, by referring the Lord Chancellor from his *memory*—which he could not trust—to the *Book of Roads* published under the direction of the Company!

He had heard, however, of the disturbances at Benares, and was even preparing to send forward a battalion of sepoys at the very time when official instructions for that purpose were sent to him by Major Palmer. He had also heard of the seizure of the Begums' treasures, but he had never heard of those Princesses being in a state of rebellion! Sir Elijah Impey, on his going to Chunar, and Mr. Hastings, on his return, had both visited him at his cantonments, but from neither of them had he heard a single word of the rebellion.—Col. Achmuty being cross-examined by Mr. Hastings' Counsel, was asked, whether it was the custom of the latter gentleman to speak of public business at table? He replied, that he had never been in the confidence of Mr. Hastings.—He was asked, if the Begums, supposing they had intended to drive the English from Oude, had strength sufficient to accomplish such a purpose? He replied in the negative. He said further, that the accomplishment of such a project was, in his opinion, impossible. He had heard of the complaints of the inhabitants of Barach against Col. Hannay; and, as far as he could learn, their opinion of that gentleman was very unfavourable, or rather it was a very bad one; but of the grounds of that opinion the witness could say nothing of his own knowledge.

Being

Being questioned with respect to oppression, the witness replied, that "*he did not believe from the GENERAL CHARACTER of Mr. Hastings, that he would oppress any body*."

Lord Cathcart asked some questions. This witness being dismissed, further written evidence was proceeded on till five o'clock, when the Court adjourned.

TWENTY-SEVENTH DAY.

WEDNESDAY, MAY 21.

The proceedings were on this day resumed by reading various extracts from the Persian Correspondence, &c. for the purpose of proving the devices that had been used to veil in mystery the transactions which gave rise to the present charge;—that the correspondence which should have been preserved fully, fairly, and explicitly, for the information of Mr. Hastings' constituents, had been garbled and mutilated; and that, lest this should prove insufficient, a *subornation* of letters, as Mr. Sheridan termed it, had taken place; that is, letters were procured as coming from several of the natives, but who were so far from writing them, that they were as ignorant of the contents, as averse to the sentiments which they contained.

In the course of their reading, Major Scott was called in, and a passage from his examination the last time he appeared was read. He said, that he was asked if any communication had passed relative to *perfets* through him, from Mr. Larkins?—to which he had answered, by relating the extent of the communication.—That a second question was put, if any other communication had passed?—to which he had answered No, supposing it still to refer to Mr. Larkins; but upon perusing the Minutes of the Evidence, he found that the question was general, and therefore he begged leave to say, that he had a communication with Mr. Devaynes, the Chairman of the Direction, in June or July 1785, to whom he wrote every particular relative to the presents that it was in Mr. Hastings's power to give. He also begged leave now to answer positively to a question which a noble Lord had put to him the last day he was examined; for he found, from the Admiralty dispatches, that the Nymph was sent from Trincomalee by Sir Edward Hughes, on the 15th of January 1782, with an account of the capture of that place and Negapatnam.

Earl Camden, without meaning the slightest reflection on the Hon. Gentleman under examination, said it was irregular and informal to correct any evidence at a distance of time after it was given.

Mr. Sheridan asked Major Scott, when he had found out the mistake in his evidence

which he wished to correct? The Major said, he wished to correct no mistake, for he had made none; but one question put to him might bear two constructions. He had supposed it to relate to Mr. Larkins, and had answered it correctly; but the moment he saw it in the Minutes, he found that the question was general, and therefore he wished to state the answer correspondent with the fact. He did not wish to alter one word of any evidence he had given.

Here some altercation took place between Mr. Shaidan and Major Scott—the former asserting, that there was a contradiction between his evidence and the fact, relative to the first information given by Mr. Hastings of the presents from Cheyt Sing.

The Lord Chancellor asked Major Scott, how he reconciled that contradiction? who replied, that without having the Minutes before him, he would boldly say, there was not the slightest contradiction between his evidence and the fact; but that the Hon. Manager, by introducing the word *Board* in his speech, which was not in Major Scott's evidence, had attempted to fix upon him the charge of contradiction; but that he was confident, if their Lordships would have the goodness to turn to the evidence he had the honour to give when last before them, they would find it perfectly correct. The Major further said, that as soon as he read the Minutes of the Evidence at Mr. Cowper's two days ago, he saw that he had actually misunderstood one question put to him, which instead of being, as he supposed it was, a question confined to Mr. Larkins, was in fact a general question, and might apply to any communication with any person.

The evidence of Major Scott being finished,

Other written documents were read, to shew that the resumption of the jaghairs, and the seizure of the Begums' treasures, were so far from having been proposed by the Nabob, or from being agreeable to him, that he had done every thing in his power to prevent them; nay, that Mr. Middleton and Mr. Johnson, the Assistant Resident, had ventured to suspend, for some few days, the execution of the Governor-General's orders, for troops to march to Fyzabad for the purpose of seizing the treasures, because they saw that the Nabob had an unconquerable reluctance to the step, and were apprehensive of the most dangerous consequences from measures, which none appeared forward to promote but the Nabob's Ministers and the English.

The Managers caused next to be read a minute of Council, held at Calcutta after the departure of Mr. Hastings, and after Mr. (now Sir John) Macpherson had succeeded to

the

the government. This minute proved, that from the year 1781 to the year 1785, the Company's official Persian translator had not been called upon to translate any Persian correspondence, except during a short period, when Major Davy, the confidential Secretary of Mr. Hastings, was absent on some business on which that gentleman had dispatched him—That, after the departure of Mr. Hastings for Europe, a trunk full of Persian letters was delivered to the translator by a Mr. Scott at Calcutta.—The Managers had proved, in an early stage of the business, that, though the whole of the Persian correspondence was carried on in the name of, and by the Governor-General only, yet he was bound, by the Company's orders, to communicate to the Council, all Persian letters at the next sitting after the receipt of them; and this day they proved, that the Persian correspondence had, for near five years, been suppressed, and withheld from the knowledge of the Council.

After this a letter was read from the Nabob to Mr. Hastings, in which he complained, that from the manner in which his country was harassed by the English gentlemen stationed in it, his life had become a burden to him; that *who would* might govern his dominions, for he was resolved to abandon them, and repair to Calcutta to reside with Mr. Hastings.

Various other letters were read relative to the resumption of the jaghires, in which not so much as a trace could be found of a charge that the Begums had been guilty of rebellion.

The Managers offered in evidence some letters which had been delivered to the House of Commons by Sir Elijah Impey. The Counsel for Mr. Hastings observed, that these letters ought to be authenticated before they could be read at their Lordships bar: their having been authenticated before the House of Commons was no reason why their Lordships should admit them as evidence at present, without any further proof. The Managers admitting the objection, called

Sir ELIJAH IMPEY
to authenticate the letters in question. He was asked whether they were not the same that he had delivered to the House of Commons.

Sir Elijah begged leave to remark, before he should answer the question, that he was very much at a loss how to give evidence without exposing himself to censure: he had been charged in another place with having given his testimony before their Lordships in a contumacious, arrogant, and insulting manner.

Here he was interrupted by Mr. Sheridan,

who said that he hoped their Lordships would not suffer the witness to entertain the Court with what had passed in another place, respecting the evidence he had given, but would direct him to give a plain answer to a plain question that had been put to him.

The Lord Chancellor observed, that the witness not having stated any objection to the question, he would of course proceed to answer it.

Sir Elijah replied, that he felt a peculiar degree of embarrassment in his situation: it had been said of him elsewhere, that he had spoken more like an accuser than a person accused, though he was not conscious of having held any language, in the course of his evidence, that could have afforded the least room for such an observation. His embarrassment was increased by this circumstance, that he stood accused in another place of high crimes and misdemeanors, and the evidence which he should give upon the present trial, might be turned against himself.

Mr. Fox, addressing the Court, said, it was very disorderly in the witness to speak of things that had passed in a place where he himself could not, or, at least, ought not to have been. If he really had been there, he reported very unfaithfully what he had heard; but if he had stated it ever so correctly, their Lordships knew very well, that, considering the place where the expressions of which the witness was speaking had been, or were supposed to have been used, they could not possibly take any cognizance of them.

Sir Elijah then said, that he would say no more upon that subject, but would proceed to answer the question put by the Hon. Manager, regardless of the difficulties thrown in his way, the embarrassments to which he was exposed, and the *snarles* that were laid for him.

Here Mr. Fox interposed again, and with great warmth called upon their Lordships to *reprimand* the witness for the expression he had used, and applied to the Managers acting in the name and behalf of the Commons of England.—It had proceeded from a *levelling* principle, by which he would endeavour to bring persons so acting down to a level with himself.—Such a principle it was the duty of the Managers to resist, and they must certainly do what their duty pointed out.

The Lord Chancellor said, that, sitting as he was there, as the Speaker of the House, he could not pronounce any censure or opinion of the House without the special direction of their Lordships; at the same time he was ready to say, that it was improper that alterations should take place, when evidence was what was expected.

Mr.

Mr. Fox still contended, that their Lordships ought to take notice of the very extraordinary expression of the witness to a Committee of the House of Commons; and he thought the least that could be done on such an occasion, would be to *admonish* the witness on the subject.

The Lord Chancellor replied, that without having recourse to their Lordships for their opinion, he might lay it down as a general position, that witnesses were bound to treat with every mark of respect Managers appointed by the House of Commons to conduct an impeachment.

Mr. Fox said, that what the noble and learned Lord had just expressed was as much as the Managers desired.

Sir Elijah Impey then said, by way of apology to the Managers, that he meant no offence to the Managers; that it was not his intention to treat them with insolence or disrespect.

This little *fracas* having thus terminated, the witness answered the question put to him, and authenticated the papers, by declaring they were the same that he had, on a former occasion, delivered to the House of Commons. Great numbers of other letters were read to and from the Begum, Mr. Middleton, Hyder Beg Khan, and Mr. Hastings, relative to the resumption of the jaghires. From the Begum's letters it appears, that she constantly urged the British guarantee as her complete security for the enjoyment of her estates; she never dreamt of having forfeited that guarantee by any act of rebellion: She said, the English had already her son's dominions in their hands, that they yielded annually *four crores*, or 4,000,000. sterling: she asked if this revenue was not enough to satisfy them, and of what little addition to so immense a sum could her jaghires be? She said, if they were seized, she would quit the country for ever; and she concluded by wishing,—“If I am to be banished from my country, may the God of Nations refuse his peace to those who afterwards shall reside therein.”* The *paroxysm* of her grief was also unimpaired by the Oriental manner of her expression—“Mine eyes (said she) are as a mill, and tears are as the grain which drop therefrom.”

* This prayer of a female made all the Court laugh very heartily.

In another instance there was some entertainment: The Begum, in a letter to Mr. Hastings, said, “she was accused of opposing Mr. John Gordon, by her Aumeel;” and she added, “Mr. John Gordon is with you; you may ask him yourself of the truth, and then it will be discovered.” A laugh followed, and the eyes of the Lords and the audience were turned towards Capt. Gordon, who sat in the front seat of Sir Peter Burrell's box.

Mr. Sheridan said, the Counsel for Mr. Hastings gave him to understand, that the laugh was, because Captain Gordon was present; but that he would not call him, as he had taken no notice in his affidavit of the letter he had written to the Begum.

At five o'clock the Court adjourned.

TWENTY-EIGHTH DAY.

THURSDAY, MAY 22.

As soon as the Court was seated,

MR. PURLING,

the gentleman who had preceded Mr. Middleton in the Residency at Lucknow, was called to the bar, and was examined by the Earl of Suffolk respecting the disposition of the Begums, and the circumstances of the Province of Oude, at the time when he was in office. Speaking to the first part of the question, his evidence was decisive, that no symptom of disaffection to the English interests had manifested itself during his residence:—In the second, he directly contradicted the evidence of Capt. Edwards.

The latter gentleman had declared that he had never remarked, or heard of a drought in the territory of Oude whilst he was there. On the other hand Mr. Purling swore, that during a whole year which he passed in the country, and which was one of the seven or eight years that Capt. Edwards resided in it, there had been so great a drought, that he did not remember there had been more than *three days* rain during the whole year.

After this witness had withdrawn, Mr. Sheridan caused some letters from Mr. Hastings to be read, to prove, that though in his narrative he had declared the resistance of the Begums to the resumption of their jaghires, to have been the cause that made him seize the treasures of the Princesses; the treasures, in fact, had been seized three months before that period, and that consequently the reason assigned by Mr. Hastings for seizing them was founded in falsehood.

Mr. Sheridan also produced evidence to prove, that the account which Mr. Hastings submitted to the Council at Calcutta, of his proceedings with respect to the Begums, as well as to Cheyt Sing, and which account had procured him the approbation of the Council, was, as Mr. Sheridan termed it, a string of falsehoods.

After a great variety of papers had been read, Mr. Sheridan desired that

SIR ELIJAH IMPEY

might be called.—The witness having appeared, he was asked, if he would be glad

of having an opportunity of correcting his evidence, if it should appear to him that he had, in any part, fallen into contradictions? He replied in the affirmative. Mr. Sheridan then desired the Clerk would read to him the evidence he gave before the House of Commons relative to the opinion he had given to Mr. Hastings of the legality of seizing the Begums' jaghires.—The Hon. Manager then asked, if the witness perceived no variance between what he had just heard read, and the evidence he had delivered at their Lordships' bar? Sir Elijah said he perceived there was a variance, arising from the inaccurate way in which he had expressed himself before the Commons; for, from what he had said before them, it might be inferred that the rebellion of the Begums was raging at the time when he (the witness) was giving his opinion to Mr. Hastings, which was not the case; for at that time the rebellion might be said to have subsided.—On a cross-examination by Lord Portchester and others, he said, that when he gave it as his opinion to Mr. Hastings, that the Nabob might lawfully seize the property of a subject in rebellion, he knew nothing at all of the Company being bound to guarantee that property; he did not know that any such guarantee existed, and therefore it could not have had any weight with him in the opinion he had given to Mr. Hastings.—Upon this he was asked if he had ever seen the treaty of Chunar? He said he had; that Mr. Hastings had given him a copy of it soon after it was concluded. He was asked, if he had not found in that treaty a clear and distinct mention of the English guarantee, under which the Begums held their property? He replied, that he wished to see the treaty of Chunar, that he might be sure there was any mention of the guarantee in it. Mr. Fox said, the witness must not see the treaty now for the purpose for which he called for it; for the Managers did not want to learn from the witness what was actually in the treaty, because they could learn that by reading it; but they wanted the witness to tell their Lordships, whether, having read that treaty, before he gave the opinion in question to Mr. Hastings, he was really ignorant of the existence of the guarantee. He replied, that he had read the treaty, but that he was nevertheless unacquainted, at the time alluded to, with the existence of the guarantee. Mr. Burke asked him, if one charge against the Bow Begum was not that she wanted to dethrone the reigning Nabob, her son, and to place Saadit Ally on the throne in his stead? The witness said he had heard so from report. He was asked, if he believed that report? He answered that he did.—He was asked who Saadit Ally was? He

said he understood he was a more favoured son of the Begum than the reigning Nabob was.—Mr. Burke wished to know if the witness knew or believed that Saadit Ally was the Begum's son? He declared that he thought so, because he had always heard him called the Nabob's brother; but from what he had heard this day, he believed he was not son to the Begum, but of another woman who had borne him to the late Nabob. Mr. Burke then asked, if it was proper for the witness to believe, against all probability, a report that the Begum wished to dethrone *her own son*, in favour of another person not her son; and whether it became him to give advice about a family of which he knew so little? He replied, that when he gave his advice to Mr. Hastings, it was upon the *supposition* that the report of a rebellion was true; but that he was not responsible for the truth or falsity of that report.

He was asked, if he had caused the contents of the affidavits sworn by the natives at Lucknow, to be explained to those who made them? He said he had not, because he presumed that those who came with affidavits ready drawn up were acquainted with the contents of them. He was asked, if he was sure that the persons who signed those affidavits in his presence were, in fact, the persons described in the affidavits as the deponents? He said he could not positively say they were; but he *presumed* they were; they were for the most part *black* officers in Colonel Hannay's regiment, or persons belonging to the officers; and as they were introduced to the witness by Colonel Hannay, he supposed they would not venture to assume names that did not belong to them, or personate other men. He was asked, if he was sure that the *Hindoos* had been sworn, in the way usual among *Hindoos*? He really did not recollect whether the *Hindoos* had made affidavits before him; if they had, he had no doubt but he made them take the oath in the ordinary way among the *Hindoos*, which was this: A Brahmin attends with a brass basin, filled with water from the Ganges; into this water the deponent puts his hand, whilst the Brahmin pronounces the form of the oath, and then the witness declares that what he is going to say shall be the truth. He was asked, whether some of the deponents had not been admitted to swear two, nay three affidavits in the same day? He replied, that he had no recollection of any such thing; but in perusing the affidavits lately, he found that such a thing had happened.—He was asked, finally, if he was sure that Mr. Hastings had recorded all the affidavits taken by the witnesses; or whether the affidavits which had been recorded were really those which the witnesses had taken? Sir

Elijah said, that all the affidavits which he had taken, he delivered to Mr. Hastings; but whether he recorded them *all*, or whether those which he had recoged were really those which he (Sir Elijah) had taken, he was not able to tell.

Capt. JAKUES

was next called. He proved that Bahar and Jewar Ally Khan, the Begum's Ministers, had been prisoners in his custody, and that, by order from the British Resident at Lucknow, he had put them *in irons*. He proved, that on one occasion he had, at the desire of the prisoners, made an application for leave to take off their irons, because they had taken physic; but his application, he said, was not attended with the wished-for success—the Resident informed him that they were the Nabob's prisoners, and he (the Resident) could do nothing in the business.—But it appeared that the troops, by which the prisoners were guarded, were part of the Company's 26th regiment of sepoys, and were commanded by the witness, who was a Captain in the Company's service.

The Managers produced some copies of letters, written by the English Resident to Captain Jaques.

The Counsel for the prisoner objected to their production on the ground, that though Capt. Jaques swore that their tenor was the same, they could not be proved to have been copied exactly from the originals which were destroyed.—This objection being held good, the Managers were proceeding to interrogate Capt. Jaques as to his recollection of the contents of those papers;—but this was again resisted by the Counsel, who urged that the Managers had no right to put leading questions to their witnesses.

Mr. Sheridan in reply, insisted very strongly, that the Managers were not to be bound by *technical forms* on this occasion; neither were they bound to consider those persons as *their* evidence who were perpetually closeted with the Counsel for the prisoner;—persons who *by accident* called in on his solicitor;—*by accident* conversed there with his agent, and who were *by accident* prepared for every question, which was not put too strongly for resistance, and too closely for evasion.

Capt. Jaques then went through a long examination respecting the treatment of the prisoners whilst in his custody. The Ministers of the Begum, it appeared, had peti-

tioned to be released at one time from their irons, for the purpose of taking some necessary medicines. The witness, as humanity required, had communicated their desire to Mr. Middleton;—but was answered, “that the prisoners were able to pay the sum of *“ twelve lacks* demanded from them—that on payment of these, they should be discharged altogether;—but that until then every indulgence must be withheld.” At five o'clock the Court adjourned.

TWENTY-NINTH DAY.

TUESDAY, MAY 27.

The proceedings were commenced by a short reading of the correspondence between Capt. Jaques and Mr. Middleton, when the former was Commandant at Fyzabad.—It related solely to the treatment of Bahar Ally Khan, and Jewar Ally Khan, the Ministers of the Begums, whilst they were confined, for the purpose of enforcing the payment of six lacks and a half, stated to be the balance due to the Company.

When the letters had been read,

Capt. JAKUES

was called to the bar, and examined. He said, that the Begums' Ministers, Bahar and Jewar Ally Khan, had been delivered into his custody, as prisoners, by Major Naylor, when the witness with his battalion relieved the Major and his detachment at Fyzabad. They were confined, he said, to the house of Jewar Ally Khan, which was an elegant and commodious habitation; and they had the liberty of walking in a large garden belonging to it; but at the same time they were *in irons*, and so closely fettered, that they could not step above a foot at a time: one of the prisoners was reputed to be worth *a million* sterling, but the other was not thought to have much wealth lying by him, as he had laid out a great part of his fortune in building. He said, they were not debarred of society*, as only such persons were kept from seeing them as were suspected of being dangerous to the State: Goulas Roy, a person in the pay of the Company, pointed out to the witness the persons whom he was not to suffer the prisoners to see. All letters sent to the prisoners were opened, and such only were delivered to them as the witness did not think to be of any importance.

It was the duty of the witness to guard the Khord Mahal, where the women belonging

* The Counsel for the prisoner asked, whether they were not indulged with *dances* and every other amusement? The Lord Chancellor stared, and asked, if the prisoners were not *in irons*? This association instantly convulsed the Court with laughter, at the idea of an *attained by letters*!—The Counsel, after waiting some time, until the general gravity was restored, said that he did not speak of *dancing* as an exercise on the part of the prisoners, but as an exhibition, presented for their entertainment.

to the late Nabob were kept. He said, these were not the *wives*, but the *concubines* of the late Sovereign, who, though of low extraction, and some of them picked up in the market-place for his pleasures, were held too sacred to be suffered to return back into the world to live with their families, and were kept for life in the Khord Mahal, after they had been *honoured* with the embraces of the Prince, at whose expence they were maintained. Captain Jaques said, he used no other restraint towards these women, than to cause them to be searched (by a female) if they went abroad in their doolies, or covered beds, to take the air. He had it in command to prevent any one from carrying jewels, money, or valuable effects, lest the Nabob and the Company should be thus defrauded of the wealth which they wanted to take from the Begums, with whose palace the Khord Mahal communicated. It appeared, however, that the restraint was in the beginning somewhat greater, because no woman was suffered to go out of the Khord Mahal; and so strictly was this point observed, that some females who went into the Khord Mahal, to visit their relations there, were taken in labour, but could not get out to be carried home, until leave was given to the witnesses to permit them to return home. He said, the women of the late Nabob were certainly, at one time, in very great distress; which he thought was occasioned by the negligence of the eunuch, Litaft Ally Khan, who had received the annual allowance for their support, but had not applied it as he should have done. He said, Sumpshire Khan was also a prisoner in his custody, and confined with the eunuchs Bahar and Jewar Ally Khan, but he was not in irons like the latter; and yet he was in no more danger of escaping than were those fettered; indeed, he observed, considering the precautions that had been used to secure them, it would have been a miracle if they had escaped:—the fetters that had been put upon the Begums Ministers, he admitted, were intended as a *severity*, rather than as a preventive of an escape*.—Here the examination of the witnesses ended, and he was informed he might withdraw.

After Capt. Jaques had been examined, the Managers desired that the Clerk would read, from Mr. Middleton's letter-book, the letters which passed between that gentleman and Major Gilpin, to whom Capt. Jaques,

on being relieved at Fyzabad, turned over the prisoners. The Counsel objected to the reading of those letters. They said, the Managers must first prove that such letters had ever been in existence; next, that the originals had been destroyed, or were in such a place that they could not be produced; and lastly, that the transcripts of them in Mr. Middleton's book were faithful and accurate.

The Managers replied, that the objection was very unexpected, as the authenticity of Mr. Middleton's books had been long since established, and many letters had been read from them, and received as evidence by their Lordships. However, to save time and argument, they would call Mr. Middleton to prove the particular letters in question. Mr. Middleton was accordingly called, and he said, that the originals of the letters in question were now in the Resident's office at Lucknow, and that the copies of them in his books were faithful and accurate. Being examined as to one in particular, written by himself to Major Gilpin, he said it was a true copy of an original he had sent to that gentleman.—The Managers were then going to read it, when the Counsel for the prisoner again interfered, and observed, that it ought to be proved that this letter had ever reached Major Gilpin. The best evidence in the world on that head would be the evidence of Major Gilpin himself, who was then in Court, and whom the Hon. Managers might call if they pleased.

The Managers did not think it necessary to call that gentleman to prove the receipt of the letter in question; for that was not a point in any degree so material as was this—that the Resident at Lucknow was acquainted with the sufferings of Bahar and Jewar Ally Khan, and of the ladies in the Khord Mahal; for as it was his duty to make those sufferings known to the Governor-General, so it must be presumed that the latter was not unacquainted with them, and yet took no step to put an end to them.—But they had another reason for not calling Major Gilpin.—If he was called by the Managers, the Counsel for the prisoner would consider him as the witness of the Managers, who in that case would be bound, by a former resolution of their Lordships, from putting certain questions to him; which would give the Counsel a handle for saying, that the Managers were attempting to lead their own witness.

* Capt. Jaques was cross-examined by the Counsel for Mr. Hastings, respecting the situation of the house of Jewar Ally Khan, the *second* place in which the Ministers were confined, and particularly with regard to the extent of the gardens. Mr. Sheridan observed, that if the situation was proved to be a perfect *Paradise*, it would effect nothing in the present instance, as the prisoners were not permitted to enjoy any of its benefits.

They had rather therefore that Major Gilpin was called by the prisoner, as then they might put such questions to him as the Court would not suffer them to put if he was to be considered as their own witness.

The Lord Chancellor wished to know what was the determination of both sides; if both persisted in their opinions, then their Lordships would adjourn to their own House, and weigh the arguments on both sides.—The Counsel said, they could not recede from their objection. The Managers begged leave to withdraw for a while to consult. In half an hour they returned, when Mr. Fox informed their Lordships, that, for the purpose of saving time, the Managers would admit the objection of the learned Counsel, though they believed themselves able to overturn it in argument; they admitted it, however, only on this occasion, reserving to themselves a right of combating it, if it should be urged again, on a point which the Managers should deem of more importance than the present.

They then called Major Gilpin, who proved, that the copies produced of the correspondence between him and the Resident at Lucknow, were faithful and accurate. They were then read; but nothing occurred in them worth remembrance, except the request to "Mr. Middleton, that he would send a larger pair of fetters, as those which he had sent would not fit the feet of the "eunuch."

The Counsel for Mr. Hastings then examined the witness.—He said, the prisoners had been treated with every mark of respect, except in the restraint laid upon them, and the fetters with which they were bound.—The Begums, he said, had several thousand

men in arms at Fyzabad, who appeared as if they were preparing to engage the troops under his command, who were 2000 in number, and had four pieces of cannon; and he had heard, that they had threatened to fire upon one of his officers. He was examined with respect to the *property* in the treasures possessed by the Begums: he thought the present Nabob, as heir to his deceased father, was entitled to the best part of those treasures; but this, he said, was only a matter of opinion, or more properly speaking, a question of *law*, upon which he was unable to decide.

The cross-examination did not conclude this day.—At twenty minutes past five o'clock the Lords adjourned.

THIRTIETH DAY.

WEDNESDAY, MAY 28.

Mr. Sheridan observed to the Court, that on perusal of the evidence printed under the authority of their Lordships, he discovered many deviations from the evidence as delivered at the bar: he was sure, however, that they had arisen, not from design, but from hurry. He intended to propose some mode for correcting what was wrong in the printed account; but as he wished not to interfere with the learned Counsel, who, he understood, was going to cross-examine Major Gilpin, he would postpone the proposition he had to make to another opportunity.

The Court then proceeded to the further examination of Major Gilpin, and his correspondence* from Fyzabad, at the time he commanded that garrison. He was afterwards cross-examined by Mr. Plumer, one of the Counsel for Mr. Hastings. The evidence produced by this cross-examination was in

* Major Gilpin advised throughout his correspondence with Mr. Middleton, that moderate measures might be used, which would be much more likely to succeed, and that he had no doubt but that, with the monies already received, he should be able to recover the Company's debt. That such measures might likewise prevent much massacre and bloodshed. He had already received four and a half lacks of rupees in part thereof, by the sale of the Princess's effects and wardrobe, and other sums, making one lack more. Mr. Middleton, notwithstanding, insisted that no guard should be withdrawn from their palace; or any lenity used, till the whole was discharged, which was little more than six lacks.

Letters were read from the Begums themselves, setting forth their distressed and pitiable situation; and one from the Major to Mr. Bristow, stating that their women were crying for hunger—that they were nearly famished, having had only a scanty allowance of rice for several days, and that they begged to be allowed to earn their daily bread; in consequence of which he had advanced them money, their distresses being so great. He again advised moderate measures; nor did he believe, that while the eunuchs Jewar and Bahar Ally Khan were confined prisoners, they should ever recover the Company's balance.

At length, when Mr. Bristow was appointed Resident at Lucknow, they were released, which occasioned the greatest joy throughout Fyzabad. Major Gilpin in one letter says, "they shed tears of joy;" and "that the scene was, according to Tristram Shandy's expression, fit only to be seen by a sentimental traveller."

substance

substance.—That the restraints under which the women in the Khord Mahal were put, were not intended to prevent the admission of provisions or necessaries into their habitation, but the carrying out of it any money or valuable effects.—That, by order from the Nabob, the witness had enlarged Bahar and Jewar Ally Khan; and having no orders either to detain or enlarge Sumpshire Khan, he suffered him to depart, taking the promise and engagement of the two former to produce him whenever he should be called for.—That the general report of the country charged the Begums with disaffection to the English, and rebellion; that he believed the report at first, but he had afterwards disbelieved it, as far as it related to the Bow Begum, whom he acquitted in his own mind, as soon as he had read the letters of thanks to her from Colonel Hannay and Captain Gordon, and he believed her in the end to be the friend of the English: all the inhabitants of Fyzabad in general, as well as her own dependents, spoke well of her, and acquitted her of any hostile design against the English. But he believed at the time, and must ever continue to believe, that the elder Begum, mother of the late Nabob, was disaffected to the English. She had a great body of troops about her palace, and appeared to him to be ready to engage his detachment.—Speaking of this Princess, and alluding to that very occasion, Major Gilpin used the following very remarkable expression, in one of his letters to the Resident at Lucknow, which letter was read:—“She seems determined to end her days, as she has always lived—in a REBELLIOUS SPIRIT.”—Major Gilpin further said, that having assisted the women in the Khord Mahal with a sum of money, he received from the Nabob a letter of reprimand for his interference.—That when he made application to the Resident at Lucknow, for indulgence to the prisoners in the custody of the witness, and the women in the palace, he received for answer, that it did not rest with any one but the *Nabob* to give directions about the prisoners, or the persons in the Zenana and Khord Mahal. The witness, however, admitted, that he had drawn upon the *Resident* for the money which he had advanced for the use of the women in the Khord Mahal, and that it was paid; that the *Resident* had sent him additional fetters to put upon the prisoners; and that from the *Resident* he had received orders to use every means in his power to procure the payment of the sums demanded of the Begums, and also a kind of *reprimand* that he had withdrawn some centinels from about the palace, and had treated with the Bow Begum about terms of accommodation.

The Managers thought it necessary to put some questions to the witness in consequence of the evidence produced by his cross-examination. The questions may be known by the answers. He replied, that he understood that the elder Begum was disaffected to the English, because when her son was going to war with the Company, prior to the battle of Buxar, she recommended it to him to exterminate all the English, except *twelve officers*, whom she wished he would reserve to present to her, for the purpose of carrying her palangin.

Mr. Sheridan observed, that the witness alluded to a period in which the Begum's son, so far from owing any friendship to the English, or being in any degree dependent upon them, was actually at war with them. No other expression or act of her life could the witness know of, produce, or recollect, to prove that she had, from the period of the battle of Buxar, down to the time when her jaghires were seized, done one single act which could be said to favour of *disaffection*, much less of *rebellion*.—Major Gilpin said, that at the time when he was at Fyzabad, and when he apprehended she would attack him, and end her days as she had always lived, in a *rebellious* *blasse*, she was, he believed, *FOURSCORE YEARS OF AGE*.—It was not a little singular, though this expression in Major Gilpin's letter would lead the reader to conclude that the life of this old Princess had been a continued scene of rebellion, yet he could not mention one single rebellious act done by herself, or by her command.

He was examined as to the general character of Mr. Hastings in India. He said, that to the year 1773 his character stood very high all over that country, for integrity, abilities, and humanity; but after the establishment of the Supreme Council of Bengal, some disputes had happened in the Council, and opinions had got abroad not quite so favourable to the Governor-General. The witness however said, that he himself thought as highly of him from the year 1773, to the moment when he left India, as all the world thought *before* 1773. He said also, that he had not been acquainted with Mr. Hastings in India—that the first place where he was introduced to him was at St. Helena, at Col. Muir's house, on his return to England.

A letter from Mr. Bristow to the Begum was read from the Company's Records, which Mr. Burke said he did not produce with a view of making their Lordships believe it was *true*, but, on the contrary, for the purpose of shewing, that by comparing it with the mass of evidence which they had received on the subject, they would find that it was *one continued falsehood from the beginning*

the end.—This letter, which was recorded by Mr. Hastings in the Bengal Secret Consultations, stated, that it was to the humanity of Mr. Hastings her Excellency the Bow Begum was indebted for her release from the restraint that had been put upon her and her Ministers; and that, had it not been for his humane interference, the consequences to her Ministers, and perhaps to herself, might have been serious in the extreme.—Mr. Burke observed, that the recording of such a letter by the person who, though it was his duty to have protected the Begum against all attacks upon her estates, both real and personal, was himself the very person who had made the Nabob, notwithstanding his reluctance, to plunder his parent, and strip her of her property, was an attempt to sport with the credulity of mankind, to see how far it might be carried in opposition to reason, truth, and sound judgement.

Mr. Middleton was next called to the bar by Mr. Sheridan, who said, he hoped the evidence on this charge would not take up much longer of their Lordships' attention.

Lord Stormont requested the Hon. Managers would allow him to ask Mr. Middleton a few questions on the subject of his former evidence, previous to the examination.

Q. On what occasion, in what manner, by whose order, and to whom, did the first intention originate, of the resumption of the jaghires, and of seizing the Begums treasures?

A. It originated with the Nabob.

On its being further pressed, and his former examination recited, the answer was—it originated with the Nabob, but had been previously a matter of conversation by Sir Elijah Impey.

Q. When was the first time that the subject was communicated to Mr. Hastings?

A. I wrote to Mr. Hastings on the 2d of December 1781, which was the first time. The letter recited, that the resumption of the jaghires was an alternative for seizing the treasures, but that the witness should do nothing till he knew Mr. Hastings's pleasure.

Q. In the letter of December the 6th fol-

lowing, to Mr. Hastings, what is the meaning of these words contained in it, "*the measure heretofore proposed*." (Here there was much perplexity to know what could be the meaning of these words; but after much doubt and difficulty it was defined.) The answer came out to be,

"That a conversation had passed some time preceding, between Mr. Hastings, Sir Elijah Impey, and Mr. Middleton, on the subject of seizing the treasures of the Begums. That Mr. Middleton had insinuated to the Nabob, that if he would make a proposal to Mr. Hastings, as coming from himself, for a seizure of the treasures, it would be readily accepted, and very agreeable to Mr. Hastings, and that he was sure such a proposition would not be opposed."

The words "*heretofore proposed*" referred therefore to this conversation.

This evidence appeared so very material, that the Lord Chancellor ordered Mr. Middleton to attend the next day of sitting, it being then half past five o'clock *.

THIRTY-FIRST DAY.

FRIDAY, MAY 30.

This day Mr. Sheridan reminded their Lordships, that he had on Wednesday informed them he had discovered many errors in the printed account of the evidence, relative to the second charge; he had now to observe, that the number of those errors amounted to nearly 100, some of which were not indeed of, any consequence, but others were certainly very material; for many things that had been said by the witnesses, about the seizing of the treasures, had been set down in the printed evidence, as if said of the resumption of the jaghires, and *vice versa*.—He then called Sir Elijah Impey, and afterwards Mr. Holt, to correct the errors in those parts of the evidence which had been given by them. But Mr. Sheridan finding, that if he was to go thro' all the errors in open Court, a great deal of time would be consumed in a purpose which might be as well answered in another way,

* On closing our account of this day, it is necessary to remark, that no positive evidence can be produced by the cross-examination of Mr. Hastings' Counsel, of the actual existence of the insurrection at Fyzabad, or in Gorruptore. To these points four British officers only could at any time have deposed, because four officers only were in those countries at that time, namely, Colonel Hannay, Major Macdonald, Captain Williams, and Captain Gordon. Colonel Hannay is dead. Major Macdonald is in India.—Captain Williams has been in London since January, and summoned by the House of Lords, at the requisition of the Managers, who have, however, not thought proper to call him.—The fourth, Captain Gordon, came over from the South of France, at the hazard of his life, to explain every circumstance relative to these letters, which made such an impression upon the House of Commons.

proposed,

proposed, that some of the Managers and the Counsel for the prisoner should meet out of Court, to examine the printed account, and state the *errata*—That the *errata* so stated should be signed by the Managers deputed for that purpose, and the Counsel for the prisoner, and shewn afterwards to the different witnesses, who should inform the Court, upon oath, whether the corrections of the *errata*, signed by the above parties, would or would not make the account of their evidence as accurate and true as it was delivered by them at their Lordships bar.—This proposal made by Mr. Sheridan met the approbation of all parties.

Just as Mr. Middleton was on the brink of being called to the bar, Mr. Law desired to call Mr. Hudson—and to preface his question by informing their Lordships, that Mr. Sheridan had unjustly accused Mr. Hastings of having drawn the Council into the writing a letter relative to the Begum, to Mr. Bristow, when they could not have done such a thing, had the Council possessed the same information that Mr. Hastings had before him.—Mr. Law said, he would prove from the Records, that Mr. Bristow had actually sent to the Board much better intelligence on the 1st of December 1782, than he did send to Mr. Hastings on the 12th; which letter of the 12th was stated to be suppressed. The letters were then read, and proved, that Mr. Law's statement was correct, and that the Board's letter of the 3d of March 1783 was in fact a reply to many letters, and amongst them, to the letter of the 1st of December.—Mr. Sheridan agreed to the fact, but said, that the Counsel allowed, after all, that Mr. Hastings had suppressed the letter of the 12th of December, which he did not enter till the 12th of May following.—Mr. Law absolutely denied the fact; and affirmed, that, by the rules of the service, it was intirely optional in the Governor-General to enter or not letters addressed to himself, which, though treating on public business, were private to them.—This Mr. Sheridan disputed; but Mr. Law again affirmed, that the fact could be proved incontestibly. Such ever had been and was now the practice of the service.

This little altercation being passed, the Managers called

Mr. MIDDLETON.

Mr. Sheridan desired he might be asked, what orders he had issued on the 2d of January 1782, to Lieutenant Francis Rutledge, relative to the Begums eunuchs then in his custody?

Mr. Middleton begged to throw himself on the protection of the Court, that he

might not reply to any transaction on this subject which passed at Fyzabad, as it might tend to criminate himself, being in this instance the principal author of the measures that were pursued against them. If any criminality was attached to those orders, he, not Mr. Hastings, was the person to blame.

Mr. Burke said, that such a mode of evading evidence could not be suffered—for if witnesses were allowed to make such objections, facts could not be got at. That the Managers would prove to their Lordships, that Mr. Middleton was, throughout this business, the servant of Mr. Hastings.

Mr. Sheridan then asked him, if Mr. Hastings ever disapproved of the orders that were issued in regard to the Begums?—The witness again considered that this question tended to criminate himself, as he had no particular communication with Mr. Hastings on the subject, and took the execution of the orders on himself.

Q. Did the witness not inform Mr. Hastings of what was done in the Khord Mahal (the palace of the Begums)?

A. He could not tell.

Q. Did he conceal from Mr. Hastings what was done relating to them?

A. He believed he did not.

Q. Did he recollect no verbal communication with Mr. Hastings on the subject?

A. He did not know.

Mr. Sheridan then put the question this way—Did the witness ever issue the following orders—to whom—and on what occasion?—

“When this note is delivered to you by Goulafs Roy, I have to desire, that you order the two prisoners to be put in irons.
“KEEPING THEM FROM ALL FOOD, &c.
“agreeable to my instructions of yesterday.”

(Signed) NATH. MIDDLETON.

The witness begged the Court would not press him to give an answer to the question; for he conceived, that if there was any thing criminal in the treatment of the eunuchs, he must be deemed criminal himself; and he hoped it was not expected that he would give evidence against himself.

Mr. Sheridan observed, that if he acted under orders from his superiors, his obedience would not be imputed to him as a crime.

The witness replied, that he had been accused by Mr. Hastings on account of his conduct in this business, which he believed the House of Commons had viewed in no very favourable light. His orders from Mr. Hastings were in general discretionary; but he had never made so much use of his own discretion, as in the transactions at Fyzabad; so that if Mr. Hastings should be thought to be criminal

criminal in the share he had in them, he (the witness) must be thought much more so, because he had acted in a great measure from his own head!

Upon the objections of Mr. Middleton to answer Mr. Sheridan's questions, Mr. Burke and Mr. Fox made some observations: the Court, however, would not press him to give answers, as he thought they might be injurious to himself.

The Managers then endeavoured to procure in another way, the evidence which they could not obtain by direct answers to their former questions.

Mr. Sheridan asked, whether he had not furnished materials for the drawing up of the prisoner's defence? He said he had.—Whether he had not seen in the prisoner's answer to the second charge before the House of Commons, the following lines?—

"Before I proceed to reply to the charges respecting my conduct to the Begums, and on the affairs of Oude, I must observe, that they contain particulars, of which I was totally ignorant until I read them in the charges. I am therefore very much indebted to Mr. Middleton, and to the information of gentlemen who were in Oude when the transactions alluded to happened. By these aids I have been enabled to reply fully to these charges," &c.

The witness said he had seen the above lines in Mr. Hastings's answer to the charge; he said also, that he himself had read the charge, before he had furnished any materials for the defence. He said he gave all the information on the subject of the Begums and their Ministers that he remembered, and without any reserve.

Here Mr. Burke remarked, that it was not a little singular that the witness should not hesitate to tell all he remembered to the very man who had brought an accusation against him for his conduct in Oude, and yet should refuse to give information on the same head to their Lordships.

Lord Loughborough observed, that if the witness would refer to his letter of the 2d of February 1782, he would see that he had mentioned the affair of the Begums to Mr. Hastings.

Q. At what time did Mr. Hastings first express his disapprobation of his conduct?

A. He could not tell.

Mr. Sheridan then read extracts of Major Scott's evidence, which stated, that a particular passage had been added to Mr. Hastings's defence by his desire; and that it was his opinion, that the whole of it was correct, honourable, and reconcilable.

Q. Had the Nabob in the affair of the

Begums any will of his own, in the measures that were executed against them?

A. Believed he had.

Q. Did the witness never contradict the Nabob's will in any measures he wished to prosecute?

A. He believed he had.

Upon a further question being put to him, it appeared he had issued his own orders in the Nabob's country, contrary to the will of the Nabob.

Q. Did he never receive any instructions from Mr. Hastings, to get the Nabob to make a gratuity to any person, after the treaty of Chunar?

Mr. Middleton again begged their Lordships favour, that he might not answer this question.

The Chancellor, on conversing with the Judges, allowed the question to be proper.

A. He believed he had received recommendations, and while he was with Mr. Hastings at Chunar.

Q. Where was the money and treasures of the Begums which were concealed, found, and dug out?

A. In the eunuch's house.

Q. To whom was the money brought?

A. To the Resident, who gave the Nabob a bond for the receipt of it, who had agreed that it should be applied towards the liquidation of the Company's debt.

Q. What was the Nabob's demand for his share of the treasures?

A. He believed it was one crore of rupees.

He afterwards added, that when this sum was paid to him, it was paid again in the same specie as it was received in. That from it were discharged the arrears of Col. Muir and Morgan, and Sir John Cumming, at Farruckabad. That rupees, from the valuation of the country, alter in their value; and that they were "*skroffed*" by him and by the Agents of the Nabob.

Mr. Sheridan asked, whether the prisoner had ever, either in India or England, expressed any disapprobation of the severities used by the witness at Fyzabad? Mr. Middleton said, he had not. He was next asked, whether, in defending himself against a charge brought by the prisoner against him, the witness had not defended himself by urging, that he had used *delay* (in seizing the treasures and jaghires) only when he thought it would have been dangerous to proceed with haste; and that he always used *force*, where he thought it could be employed with advantage? The witness admitted that this was the style of his defence.—Hence it was to be inferred, that Mr. Hastings, so far from having been offended at the witness

witnesses for having acted with too much rigour and severity towards the Begums and their Ministers, that he had actually made it a crime in him, that he had been slow in proceeding to rigorous methods.

Mr. Sheridan proved, from a part of Mr. Hastings's defence, that though the prisoner did not admit he was responsible for the severities inflicted on the eunuchs, yet he justified those severities, and declared that the treatment of these persons ought not to be brought harsh, or undeservedly severe.

Various questions were put to Mr. Middleton relative to the eunuchs, which he refused to answer, alledging, that he could not answer them without danger to himself.

He was afterwards examined by Mr. Law, Counsel for Mr. Hastings.—He was asked, whether the sums allotted for the support of the Nabob's household were not sufficient to maintain the dignity and splendour of a Court?—if they had been properly managed?—what number of elephants and horses the Nabob had?—what might be the expence of keeping the elephants?—and whether the elder Begum did not dislike her grandson the Nabob, on account of his connection with the English? The witness replied, that it was matter of opinion whether the sums allotted for the Nabob's household were sufficient for the support of his Court in splendour; for his own part he thought, that, with good management, they were. He believed his Highness was possessed of 1000 elephants: the expence of keeping them he could not tell, but he thought it must be a great deal more than 10,000*l.* a-year; for he knew that one of these creatures was held in so much veneration, that there was a jaghire worth 12,000 rupees a-year settled upon it for its support. The number of cavalry attending upon the Nabob he believed to be about 2000: he said they were not as well clothed as the Company's horse, but much better than the cavalry of any native Prince, and were armed like the Europeans. The Nabob, he said, stood in great awe of the elder Begum, and

would not venture to visit her without taking the witnesses with him: his Highness left him in an outer apartment, whilst he himself went into the interior one, where the Princess received him. The Begum, he believed, greatly disliked the Nabob; for he had been informed, that whenever she received a visit from him, she made it a point always, after he had retired, to have the *Musnud*, or throne, or chair of state, on which he had been seated, broke in pieces, and thrown away. But he could not say that this dislike was occasioned by her grandson's attachment to or connection with the English.

Mr. Middleton said, that Capt. Edwards had not been patronized by Mr. Hastings, but believed it was by Sir Elijah Impey. That in the year 1779 *there was a great drought*. That the failure of the lands arose from *natural causes*. That the bad management of the Nabob might likewise have contributed to the famine. That Col. Hannay bore a good character; and that at Goruckpoor the military was necessary to *enforce the civil laws*, as well as collect the revenues. Never heard of *bamboo cages* till he heard of them at the bar; and thought the prisons there nearly as *agreeable places* as our own. That in 1781, he was certain the Begums were disaffected.—On being questioned about the state of his book of correspondence, he said, "That, DIRECTLY or INDIRECTLY, he never had communication with Mr. Hastings about his book of letters, prior to his examination before the House of Commons."

At ten minutes past five o'clock the witnesses were ordered to withdraw.

Mr. Sheridan then addressed the Court, and said, he was directed to inform them, that the Managers entertained the most grateful sense of the patience with which their Lordships had attended to the great mass of evidence that had been laid before them; and that, with what they had given this day, the Managers had closed their evidence in support of the second charge.

Their Lordships immediately adjourned.

S P E E C H

O F

R. B. SHERIDAN, Esq.

ON SUMMING UP THE

E V I D E N C E

ON THE

SECOND, OR BEGUM CHARGE.

THIRTY-SECOND DAY.

TUESDAY, JUNE 3.

SINCE the commencement of this memorable Trial, Westminster Hall has not seen so numerous or so brilliant an assemblage of persons as crowded every part of it this day. By eight o'clock in the morning the avenues leading to the Hall, through New and Old Palace Yards, were filled with ladies and gentlemen of the most respectable appearance, many of them Peereesses in full dress, who stood in the street for upwards of an hour before the gates were opened. The exertions made to push forward, with a view to get convenient seats, had like to have proved fatal to many.

The Peers did not enter the Hall till twelve o'clock. In some minutes after, the Lord Chancellor having bowed to Mr. Sheridan, to signify to him that their Lordships were then ready to hear him,

That Hon. Gentleman rose, whilst all about him was as still and hush as if the Hall was empty.—He said it was not his intention to keep back their Lordships attention for any time from the consideration of the charge immediately before them, by making many preliminary observations: such general remarks as it was in his power to make, would only weaken what had been already urged by the Right Hon. Gentleman who was the principal mover of the impeachment—whose genius exceeded every thing but his disposition—who understood and felt for all—through whom and by whom so great an embodied stand had been made in defence of the rights of man against man's oppression. He might, however, without

injury to the general cause, and without trespassing too much upon their Lordships patience, say some few words both upon the subject of the impeachment in general, and the particular situation of himself and his Hon. Colleagues who had been appointed to conduct it.

He thought, that if ever there was a prosecution in which those who carried it on were free from all unwarrantable resentment, or even improper bias, it was the present. He could enter into his own heart, and declare most solemnly, that he found there no private incentive to the part he had taken in this impeachment, and he verily believed he might safely say that all his Hon. Colleagues, as well as himself, were actuated solely by the zeal they felt for the public welfare, and their honest solicitude for the honour of their country, and the happiness of those who were under its dominion and protection. With such objects in view he really lost sight of Mr. Hastings, who, however great in other respects, was too insignificant to be mixed with such important considerations. "The unfortunate Gentleman" at the Bar is no mighty object in my mind. Amidst the series of mischiefs, to my sense, seeming to surround him, what is he but a petty *Nucleus*, involved in its *Lamina*, scarcely seen or thought of." It was impossible, therefore, that his Hon. Colleagues and he should feel themselves under the influence of malice or ill-will towards that unfortunate gentleman; they acted solely under a delegated power; they stood at their Lordships bar as the representatives of the Commons of England, and as they acted

in that public capacity, it might as well be said that the Commons of Great Britain, in whose name the impeachment had been brought before their Lordships, were actuated by malice to the prisoner, as that the Managers of the House of Commons had any private spleen to gratify in discharging the duty imposed upon them by their principals. In truth, the prosecution had not been *begot in prejudice, or nursed in error*: it was founded in the clearest conviction of the wrongs that the natives of Hindostan had suffered through the mal-administration of those in whose hands this country had placed extensive powers, which ought to have been exercised for the benefit of the governed, but which had been used by the prisoner at the bar for the shameful purposes of oppression.

To convince their Lordships that the British government, which ought to have been a blessing to the powers in India connected with it, had been a scourge to the natives, and the cause of desolation to the most flourishing provinces in Hindostan, he had only to read a letter that had been received not long since from Lord Cornwallis, the present Governor-General of Bengal.—In that letter the noble Lord stated, that he had been received by the Nabob Visier with every mark of friendship and respect; but the honours he received at the Court of Lucknow had not prevented him from seeing the desolation that overspread the face of the country, the sight of which had shocked his very soul. He spoke to the Nabob on the subject, and earnestly recommended it to him to adopt some system of government, that might restore the prosperity of his kingdom, and make his people happy.—The Nabob's answer was strikingly remarkable.—That degraded Prince said to his Lordship, that as long as the demands of the English government upon the revenue of Oude should remain unlimited, he (the Nabob) could have no interest in establishing any system of economy; and whilst the English should continue to interfere in the internal government of his country, it would be in vain for him to attempt any salutary reform, for his subjects knew he was only a cypher in his own dominions, and therefore laughed at and despised his authority and that of his Ministers.

Surely the state to which that wretched Prince was reduced by our mismanagement, and the ruin which had, by the same cause, been brought upon his country, called loudly upon their Lordships

to interfere, and rescue their national honour and character from the infamy to which both would be exposed, if no inquiry was made into the causes of such calamities, and no punishment was inflicted on the authors of them.—*Policy*, as well as *Justice*, called upon them to vindicate the character of Great Britain in India; for he would prove to them, from good authority, that the native powers had so little reliance upon our faith, that the preservation of our empire, in that quarter of the world, could be effected only by convincing the native princes, that a religious adherence to engagements should in future characterize the British government in that country.—To prove the necessity there was for bringing such a conviction to the mind of every native prince, Mr. Sheridan read a letter to Lord Cornwallis, from Captain Kirkpatrick, who, when he wrote it, was Resident at the Court of the Great Marhatta chief, Madajee Scindia. This gentleman stated in his letter, that the new system of moderation brought by his Lordship, was certainly the only one that could give stability to our empire in India; but, at the same time, he must observe, that as the princes of that country had so frequently had cause to lament that no engagement could bind us, it would require time, and repeated proofs of good faith, to convince them that we were serious in the professions which were then held out to them on the part of the British government; that *ambition*, or a desire of *conquest*, should no longer be encouraged by British councils; and that a most religious adherence to all treaties and engagements should be the basis of all our future political transactions.

To these letters, Mr. Sheridan said, he must call upon their Lordships to give an answer, not by *words*, which would not find credit with the natives, who had so often been deceived by our professions, but by *deeds*, which would convince them that we were truly in earnest; for it was only by our punishing those who have been guilty of the delinquencies which have brought ruin on the country, that we could possibly gain confidence with the people of India, and satisfy them that future delinquents will not be encouraged or countenanced by the ruling powers at home.

In looking round for an object fit to be held out to the world as an example of national justice, their Lordships must necessarily fix their eyes upon Mr. Hastings.

tings. He was the great cause of the degradation of our character in India, and of the oppression of its devoted inhabitants, and he was the only victim that could atone for the calamities he had occasioned.

But whilst he pointed out the prisoner at the bar as a proper object of punishment, he begged leave to observe, that he did not wish to turn the sword of justice against that man, merely because an example ought to be made; such a wish was as far from his heart as it was incompatible with equity and justice: if he called for punishment upon Mr. Hastings, it was because he thought him a great delinquent, and the greatest of all those who, by their rapacity and oppression, had brought ruin on the natives of India, and disgrace upon the inhabitants of Great Britain.

Whilst he called for justice upon the prisoner, he could wish also to do him justice: he would be sorry that the weight and consequence of the Commons of Great Britain, in whose name the protection had been set on foot, should operate to his prejudice: indeed, whilst he had such upright judges as their Lordships, it was impossible that any thing could injure him, but the clearest and most unequivocal proofs of guilt.—“It is not the peering suspicion of apprehending guilt—It is not any popular abhorrence of its wide-spread consequences—It is not the secret consciousness in the bosom of the Judge, which can excite the vengeance of the law, and authorise its infliction!—No—In this good land, as high as it is happy, because as just as it is free, all is definite, equitable and exact—The laws must be satisfied before they are incurred—And ere a hair of the head can be plucked to the ground, LEGAL GUILT must be established by LEGAL PROOF!”

This principle he must admit as conclusive, though, in the present case, he felt the inconvenience of it, which might operate as a bar to public justice; for the Managers of the impeachment laboured under difficulties, that could scarcely occur in any other prosecution. The witnesses whom they had been obliged to call, were, for the most part (he would state the exceptions in the proper place), the accomplices of the prisoner's guilt, and the instruments of his oppressions: from such witnesses it was not likely that proofs of that guilt could be obtained without great difficulty.

In the written documents from which the Managers had selected their proofs in

support of the impeachment, as considerable difficulties had occurred: those documents had been drawn up by the parties whose study it was, as it was their interest, though contrary to their duty, to conceal the iniquity of their proceedings, and consequently to disguise the truth.

But though he stated the difficulties which the Managers had to encounter, he did not mean to say that the proofs which they had adduced were in any degree defective: “weak, no doubt, in some parts, and incompetent—and yet more deplorable, as undisturbed by any compunctious visitings of repenting accomplices—but yet enough, and enough in sure validity, to abash the front of guilt no longer hid, and to flash conviction on conscientious judges.”

Having premised these observations, Mr. Sheridan said he would now make some remarks upon the defence, or rather *defences*, made by the prisoner. He had already made four, three of which he had since thought proper to abandon, and discredit. Indeed, he believed that it was a novelty in the history of criminal jurisprudence, that a person accused should first make a defence, and afterwards endeavour to convince his judges that they ought not to give it the least credit. Mr. Sheridan said, he was the more surprized at this conduct in the prisoner, as it was since he had had the assistance of Counsel that he had made this attempt: he thought, that when he had been rescued from his own incautious rashness, he would not have taken so extraordinary a step as was that of discrediting his own defence.

In every court of law in England, the confession of a criminal, when not obtained by any promise of favour or lenity, or by violent threats, was always admitted as conclusive evidence against himself; and if that confession was made before a grave and respectable assembly of persons, competent to take cognizance of crimes, there was no doubt but it would have due weight, because it was fair to presume that such a confession must be *voluntary*, and not procured by any undue or improper means. The prisoner had, in his defence made before the House of Commons, admitted many facts; and it was the intention of the Managers to urge in support of the charges, his admission of them: for when he went the length of admitting them, he was speaking the language not of inconsiderate rashness and haste, but of deliberate consideration and reflection, as would appear to their Lord-

ships from a passage which he should read to them from the *introduction* to the defence read by Mr. Hastings himself at the bar of the House of Commons. In that passage, the prisoner used the following words:

"Of the discouragement to which I allude I shall mention but two points, and these it is incumbent on me to mention, because they relate to effects which the justice of this Hon. House may, and I trust will, avert. The first is an obligation to my being at all committed in my defence, since, in so wide a field for discussion, it would be impossible not to admit some things, of which an advantage might be taken, to turn them into evidence against myself; whereas *another* might as well use as I could, or better, the same materials of my defence, without involving me in the same consequences. But I am sure that this Hon. House will yield me its protection against the cavils of unwarranted inference; and if the *truth* can tend to convict me, *I am content to be MYSELF the channel to convey it.*—The other objection lay in my own breast. It was not till Monday last that I formed the resolution, and I knew not then whether I might not, in consequence, be laid under the obligation of preparing and completing in five days (and in effect so it has proved) the refutation of charges which it has been the labour of my accuser, armed with all the powers of Parliament, to compile during as many years of almost undisturbed leisure."

Here then, Mr. Sheridan observed, the prisoner had upon deliberation committed his defence to paper; and, after having had five days to consider whether he should present it or not, he actually delivered it himself to the House of Commons, as a defence founded in *truth*, and triumphantly remarked upon it, that if *truth* could tend to convict him, he was willing to be himself the channel to convey it. ✱

But what was his language now that he had had the advice of Counsel? Nay, that there was not a word of truth in what he delivered to the House of Commons as the *truth*; that he had no knowledge of many of the facts, no recollection of the circumstances; that he had put his *memory in commission*, and appointed Mess. Middleton, Scott, Gilpin, &c. the *Commissioners*; nay, that he had also put his *defences into commission*, to be exercised by the same gentlemen. "These, like

"raw materials, the master workman distributes about him to all hands awaiting:—His words are to be strung—arguments spun—passages are to be woven:—He puts his conscience into departments—Major Scott, says he, take care of my consistency—Mr. Middleton, you have my *memory* in commission!—Prove me a financier, Mr. Shore.—Answer for me, Mr. Holt (all journeymen, good enough for the House of Commons, though not for your Lordships):—Help, one and all, to bear me up under the bare pressure of my laurels, the burthen of my glory!—Refresh, and save me from the calentures of my state, from the peril of my own panegyric."

Thus could the prisoner sport with the understanding and feelings of the House, by asserting that to be false and not entitled to credit this day, which, on a former, he had declared to be the truth itself, and the ground of his hope that it would procure him an acquittal, or, what would have been the same thing to him, would prevent the Commons from carrying up the Impeachment against him to their Lordships bar. Indeed from this avowal and disavowal of defences, and from the defence, different from all the former, which had been delivered to their Lordships, it would seem as if Mr. Hastings was of opinion, that any thing would do for the House of Commons.—Possibly it might turn out hereafter, that he entertained a similar opinion with respect to their Lordships; for it was not improbable but he might hereafter abandon the defence he had delivered to them: he might say, "It was not made by me, but by my Counsel, and therefore I hope your Lordships give no credit to it." But if he would abide by that his last defence, he (Mr. Sheridan) would join issue with him upon it, and prove it to be in many places void of truth, and in almost every part of it unfounded in argument as well as fact.

Having thus touched upon the different defences made by the prisoner, Mr. Sheridan next adverted to the allegations in the second charge that had been supported in evidence. He said, that the Managers had proved the high birth and great rank of the Begums, or Princesses of Oude; they had also proved from the evidence of Sir Elijah Impey, Mr. Middleton, Mr. Goring, and others, how sacred was the residence of women in India. A threat, therefore, to force that residence, and violate its purity by sending men armed into

it was a species of torture, the cruelty of which could not be conceived by those who were unacquainted with the customs and notions of the inhabitants of Hindostan. A knowledge of the customs and manners of the Mussulmen of Turkey, would not enable one to judge of those of Mussulmen in India: In the former, ladies went abroad veiled, and though not so free as those in Christian countries. Still they were not so closely shut up as were the ladies professing the same religion in Hindostan. The confinement of the Turkish ladies was in a great measure to be ascribed to the jealousy of their husbands; in Hindostan the ladies were confined, because they thought it contrary to *decorum* that persons of their sex should be seen abroad: they were not the victims of jealousy in the men, on the contrary, their sequestration from the world was *voluntary*; they liked retirement, because they thought it best suited to the dignity of their sex and situation: they were shut up from liberty, it was true; but liberty, so far from having any charms for them, was shocking to their feelings; they were *enslaved* rather than *immured*; they professed a greater purity of pious prejudice than the Mahomedan ladies of Europe and other countries, and more zealously and religiously practised a more *holy* system of *superstition*. Such was their sense of delicacy, that to them the sight of man was pollution; and the piety of the nation rendered their residence a *sanctuary*. What then would their Lordships think of the tyranny of the man who could act in open defiance of those prejudices, which were so interwoven with the very existence of ladies in that country, that they could not be removed but by *death*? What, he said, would their Lordships think of the man who could threaten to prophane and violate the sanctuary of the highest description of ladies in Oude, by saying that he would storm it with his troops, and remove the inhabitants from it by force?

Mr. Sheridan dwelt for some time with great feeling on this point. He next adverted to the treasures in the Zenana, and the relation in which the Bow Begum and the Nabob stood to each other, and to Mr. Hastings. He adduced various arguments to shew, that these treasures did not belong to the state, but to the Begum; and most happily ridiculed the memory of Mr. Middleton, that remembered *inferences*, but forgot the *facts* that would support them; nay, sometimes remembering the facts that overturned them.

Thus, he said, the treasures must have belonged to the *state*, and consequently were the inheritance of the *Nabob*, because that Prince had drawn for a large sum, which was to be paid out of those treasures, but his draft was not honoured—And he said, they could not be the property of the Begum; for he remembered, that when the Nabob's draft was returned without having been honoured, the Begum drew for the same sum, upon the same treasures, and the money was instantly paid.

Mr. Sheridan shewed next, that there was very good ground for presuming that the treasures possessed by the Begum were the property of that Princess; she had endeared herself to her husband, the late Nabob, by flying to him in the moment of his distress, after his defeat at Buxar, and carrying with her to his relief the jewels with which in happier days his fondness for her had enriched her: upon these she raised him a large supply. When the political generosity of this country restored him afterwards to his throne, his gratitude to his wife knew no bounds: her ascendancy over him was such, that she prevailed upon him to appoint his son by her, his successor.

The present Nabob, as had appeared from a passage in a letter written by Mr. Hastings to him, and since proved in evidence, owed to her not only his birth and succession to the crown, but also the preservation of his life; for one day his savage father, in a rage attempting to cut him down with his scymeter, the Begum rushed between her husband and her son and saved the latter, though with the loss of some of her own blood; for she was wounded by the blow that was not aimed at her. A son so befriended and so preserved, Mr. Hastings had armed against such a mother—he invaded the rights of that Prince, that he might compel him to violate the laws of *nature*, by plundering his parent; and he made him a *slave*, that he might afterwards make him a *monster*. Mr. Hastings was bound to be the *protector* of the Begum, instead of her *plunderer*; for her husband, on his death-bed, bequeathed her to his friendship, and Mr. Hastings had always called that husband his *brother*—but no consideration could make him discharge the duties of any obligation that could set bounds to his *rapacity*.

The interference of Mr. Bristow in 1775, in the difference between the Begum and the Nabob, in consequence of the claims of the latter, was the next ground of Mr. Sheridan's observations.

Mr. Bristow had then, in a conversation with the superior or elder Begum, thrown out an insinuation, that the treasures which she possessed were the treasures of the state;—and on this insinuation, so termed by Mr. Bristow himself, had Mr. Hastings founded all his arguments on that head, and on which he lately appeared to place so much reliance.—The Begums at that time gave up to Asoph ul Dowlah sums amounting to five hundred and fifty thousand pounds.—Of this a part was to be paid in goods, which, as they consisted of arms, elephants, &c. the Nabob alleged to be his property, and refused to accept as payment. This occasioned a dispute, which was referred to the Board of Calcutta. Mr. Hastings then vindicated the right of the Begums to all the goods in the Zenana, and brought over the majority of the Council to his opinion. The ideas then placed on record he had since found it convenient to disown, as belonging not to him, but to the majority of the Council!

“There are,” said Mr. Sheridan, “in this assemblage, they who are perfect in their ideas of law and justice, and who understand tolerably well *majorities* and *minorities*; but how shall I justify this new doctrine of Mr. Hastings? It is as if Mr. Burke, the great leader of the cause, should some ten years hence revile the *Managers*, and commend Mr. Hastings!” “Good God!” might say one of those Gentlemen, “it was *you* who instigated the enquiry; it was *you* who made me think as I did!” “Aye; very true,” might Mr. Burke reply, “but I was then in a *minority*: I am now in a *majority*; I have now left my opinions behind me; and I am no longer responsible.”

The claims however, it was observable, of the Nabob, as to the treasure of the Begums, were at this time the only plea alleged for the seizure. These were always founded on a passage of that *Koran* which was perpetually quoted, but never proved.—Not a word was then mentioned of the strange rebellion which was afterwards conjured up, and of which the *existence* and the *notoriety* were equally a secret!—a disaffection which was at its height at the very time when the Begums were dispensing their liberality to the Nabob, and exercising the greatest generosity to the English officers in distress!—a disturbance, short, without its parallel in history, which was raised by two women—carried

on by two *eunuchs*—and finally suppressed by an *assault*!

Mr. Sheridan then adverted to the negotiations of Mrs. Middleton with the Begums in 1778, when the discontents of the superior Begum would have induced her to leave the country, unless her authority was sanctioned, and her property secured by the guarantee of the Company.—This guarantee the Council—or Mr. Hastings, had thought it necessary to deny, as knowing that if the agreements with the elder Begum were proved, it would affix to Mr. Hastings the guilt of all the sufferings of the women of the Khord Mahal, the revenues for whose support were secured by the same engagement. In treating this part of the subject, the principal difficulty arose from the *uncertain* evidence of Mr. Middleton, who, though concerned in the negotiation of the four treaties, could not recollect affixing his signature to *three* out of that number. Mr. Sheridan proved however, from the evidence even of Mr. Middleton, that a treaty had been signed in October 1778, wherein the rights of the elder Begum were fully recognized; a provision secured for the women and children of the late Vizier in the Khord Mahal; and that these engagements had received the fullest sanction of Mr. Hastings. These facts were confirmed by the evidence of Mr. Purling, a gentleman, who, Mr. Sheridan said, had delivered himself fairly, and as having no *fool secrets* to conceal. He had transmitted copies of these engagements in 1780 to Mr. Hastings at Calcutta; the answer returned was, that in arranging the taxes on the other districts, he should pass over the jaghires of the Begums. No notice was then taken of any impropriety in the transactions in 1778, nor any notice given of an intended revocation of those engagements.

But in June 1781, when Gen. Clavering and Col. Monson were no more, and Mr. Francis had returned to Europe, all the *hoard* and *arrears* of collected evil burst out without restraint, and Mr. Hastings determined on his journey to the upper provinces.—It was then, that, without adverting to intermediate transactions, he met with the Nabob Asoph ul Dowlah at Chunar, and received from him the mysterious present of 100,000*l*. To form a proper idea of this transaction, it was only necessary to consider the respective situation of him who gave and of him who received this present.

It was not given by the Nabob from the superflux of his wealth, nor in the abundance of his esteem for the man to whom it was given. It was, on the contrary, a prodigal bounty, drawn from a country depopulated—no matter whether by natural causes, or by the grinding of oppression. It was raised by an exaction, which took what calamity had spared, and rapine overlooked;—and pursued those angry dispensations of Providence, when a *prophetic* chastisement had been inflicted on a *fated* realm.—The secrecy which had marked this transaction was not the smallest proof of its criminality. When Benarum Pundit had, a short time before, made a present to the Company of a lack of rupees, Mr. Hastings, in his own language, deemed it “worthy the praise of being recorded;” but in this instance, when ten times that sum was given, neither Mr. Middleton nor the Council were acquainted with the transaction, until Mr. Hastings, four months after, felt himself compelled to write an account to England, and the intelligence returned thus circuitously to his friends in India! It was peculiarly observable in this transaction how much the *distresses* of the different parties were at variance. Mr. Hastings travels to the Nabob to see, no doubt, and enquire into his *distresses*, but immediately takes from him 100,000*l.* to be applied to the necessities of the *distressed* East India Company; but on farther deliberation, these considerations vanish; a *third* object arises more worthy than either of the former, and the money is taken from the one, and demanded from the other, to be applied to the use of—the *distressed* Mr. Hastings.

The money, it was alledged by Mr. Hastings, had been originally taken to discharge the arrear of the army. It had not long been applied to that use, because it was received in bills on Gopal Dos, a rich banker at Benares, who was then kept a prisoner by Cheyt Sing.—Major Scott being questioned on the subject, declared the bills on Gopal Dos were as good as cash, for that though the principal of the house was a prisoner, that circumstance made no difference whatsoever with the other partners. Thus Mr. Hastings was inconsistent with himself, by alledging an objection which should have prevented his taking the money in the first instance, for the purpose he had stated; and Major Scott contradicting Mr. Hastings, removed the objection, and restored the business to its original

footing.—But through all those windings of mysterious hypocrisy, and of artificial concealment, it was easy to mark the sense of hidden guilt. Mr. Hastings himself, being driven from every other hold, advanced the stale plea of *State Necessity*. But of this necessity he had brought no proof; it was a necessity which listened to whispers for the purpose of crimination, and dealt in rumour to prove its own existence.—To a General leading the armies of Britain—to an Admiral bearing her thunders over the seas, the plea of necessity might be indulged, if the wants of those were to be supplied whose blood had been spilt in the service of their country; but his “*State Necessity*, grand, magnanimous, and all commanding—went hand in hand with honour, if not with use—it went forth with our arms, when the *Hero* could plume himself, like the *Imperial Eagle* on his nest, unassailable!—and amidst his fair successes, look down in justified disdain on any malevolent challenge of minute error; his *Fame* as firm as the *Rock*, which, from his defence, all the enemy had battered in vain!”

On the business of the treaty of Chunar, which succeeded the acceptance of this *State Necessity*, Mr. Sheridan was equally peripetuous and equally severe. It was a proceeding, he observed, which, as it had its beginning in corruption, had its continuance in fraud, and its end in violence. The first proposition of the Nabob after his recent liberality, was, that the army should be removed, and all the English recalled from his dominions. The bribe which he had given was the obvious price of their removal. He felt the weight of their oppression:—he knew, to speak his own language—“that when the English staid, they staid to ask for something.” Though their predecessors had exhausted the revenue;—though they had shaken the tree until nothing remained upon its *leafless* branches, yet a new flight was on the wing to watch the first *buddings* of its prosperity, and to nip every promise of future luxuriance.

To this demand Mr. Hastings had promised to accede, and to recal every Englishman from the province; but by an evasion which Mr. Middleton disclosed with so much difficulty to their Lordships on the last day of his appearance, the promise was virtually recalled. No orders were afterwards given for the establishment of Englishmen in the province, but *recommendations* of the same effect with

Mr. Middleton and the Vizier were sent, and the practice continued.—In the agreement respecting the refundment of the Jaghires, the Nabob had been duped by a similar deception. He had demanded and obtained leave to resume those of certain individuals: Mr. Hastings, however, defeated the permission by making the order general; knowing that there were some favourites of the Nabob whom he could by no means be brought to dispossess.—Such was the conduct of Mr. Hastings, not in the moment of cold or crafty policy, but in the hour of confidence and the effervescence of his gratitude for the favour he had just received. Soaring above every common feeling, he could deceive the man to whose liberality he stood indebted—even his *gratitude* was *perilous*—and a *danger* actually awaited on the return which he was to make to an effusion of generosity!

The transactions in which Sir Elijah Impey bore a share, and the tenor of his evidence, were the next objects of Mr. Sheridan's animadversion.—The late Chief Justice of Bengal, he remarked, had repeatedly stated, that Mr. Hastings left Calcutta with *two* resources in his view,—those of *Benares* and of *Oude*. It appeared, however, from every circumstance, that the latter resource was never in his contemplation, until the insurrections in Benares, terminating in the capture of Bedjegur, had destroyed all his hopes in that province. At that instant, the mind of Mr. Hastings, fertile in resources, fixed itself on the treasures of the Begums, and Sir Elijah Impey was dispatched to collect materials for their crimination: "But I have ever thought," said Mr. Sheridan, "the selection of such a personage, for such a purpose, one of the greatest aggravations of the guilt of Mr. Hastings."—That he, the purity of whose character should have influenced his conduct, even in his most domestic retirements;—that he, who, if consulting the dignity of British Justice, should have remained as stationary as his court in Calcutta;—that such a man should be called to travel 500 miles for the transaction of such a business, was a deviation without a plea, and a degradation without example.—This, however, was in some degree a question to be abstracted for the consideration of those who adorned and illumined the seats of Justice in Britain, and the purity of whose character precluded the necessity of any further observations on so different a conduct.

With respect to the manner in which Sir Elijah Impey had delivered his evidence, it required some observation, though made without imputing to that gentleman the smallest culpability.—Sir Elijah had admitted, that in giving his evidence he had never answered without looking equally to the probability and the consequences of the fact in question. Sometimes he had even admitted circumstances of which he had no recollection beyond the mere probability that they had taken place. By consulting in this manner what was *probable*, and the contrary, he might certainly have corrected his memory at times, and Mr. Sheridan said he would accept that mode of giving his testimony, provided that the inverse of the proposition might also have place, and that where a circumstance was *improbable*, a similar degree of credit might be subtracted from the testimony of the witness. *Five* times in the House of Commons, and *twice* in that Court, for instance, had Sir Elijah Impey borne testimony, that a rebellion was raging at Fyzabad at the time of his journey to Lucknow. Yet on the *eighth* examination, he had contradicted all the former, and declared, that what he meant was, that the rebellion *had* been raging, and the country was then in some degree restored to quiet.—The reasons assigned for the former errors were, that he had forgotten a letter received from Mr. Hastings, informing him, that the rebellion was quelled, and that he had also forgotten his own proposition of travelling through Fyzabad to Lucknow. With respect to the letter, nothing could be said, as it was not in evidence; but the other observation would scarcely be admitted, when it was recollected that in the House of Commons, Sir Elijah Impey had declared that it was his proposal to travel through Fyzabad, which had originally brought forth the information, that the way was obstructed by the rebellion!—From this information Sir Elijah Impey had gone by the way of Illyabad, ~~where~~ what was yet more singular, was, that on his return he would again have returned by the way of Fyzabad, if he had not been again informed of the danger; so that had it not been for these friendly informations, the Chief Justice would have run plump into the very *focus* of the rebellion!—There were two circumstances, however, worthy of remark.—The *first* was, that Sir Elijah Impey should, when charged with so dangerous a commission as that of procuring evi-

ence, to prove that the *Begums* had meditated the expulsion of their son from the throne, and of the English from Bengal, twice intend to pass through the city of their residence.

"This *giddy* Chief Justice, said Mr. Sheridan, disregards business: He wants to see the country: Like some *innocent* school-boy, he takes the primrose path, and amuses himself as he goes: He thinks not that his errand is on danger and death; and that his *party of pleasure* ends in leading others *with irons.*" When at Lucknow, he never mentions the affidavits to the Nabob: No, he is too polite: He never talks of them to Mr. Hastings—out of politeness too. A *Master of Ceremonies* in Justice! When examined at the bar, he said,—he imagines there must have been a *sworn interpreter*, from the looks of the manager. How I looked, Heaven knows, said Mr. Sheridan, but such a physiognomist there is no escaping.—He sees a sworn interpreter in my looks: He sees the manner of taking an oath in my looks! He sees the *Baton* and the *Ganges* in my looks! As for himself, he only looks at the *tops* and *bottoms* of affidavits! In seven years he takes care never to look at these swearings; and then goes home one night, and undoes the whole; though when he has seen them, Sir Elijah seems to know less about them than when he has not.

The second circumstance worthy of observation, was, that if a conclusion could be made from a cloud of circumstances, the inference on this occasion would undoubtedly be, that Sir Elijah Impey was dissuaded by Mr. Hastings and Mr. Middleton from passing by the way of *Fyzabad*, as well knowing, that if, as a friend to Mr. Hastings, he were to approach the *Begums*, he would be convinced, by his reception, that nothing could be more foreign from the truth than the idea of their supposed disaffection.—It was also observable, that Sir Elijah Impey, at Lucknow, taking evidence in the face of day in support of this charge of rebellion against the *Begums*, when conversing with the Nabob and his minister, heard not a single word from either of a rebellion by which it was proposed to dethrone the Nabob, and to change the government of his dominions!—And equally unaccountable it appeared, that Sir Elijah Impey, who had advised the taking of those affidavits for the safety of Mr. Hastings, had

never read them at the time, for the purpose of seeing whether they were sufficient for the purpose, or the contrary!—After so long a reserve, however, and after declaring on oath that he thought it unnecessary, the next step taken by Sir Elijah Impey was to read the affidavits, as, however late, they might contribute something to his information. He had been led to this study, by his own allegation, from having been misled by Mr. Sheridan, one of the Managers on the part of the Commons, who by looking at a book which he held in his hand, had persuaded him to declare that a sworn interpreter was present on the receiving of those affidavits—that Major Davy was present for that purpose—and that whoever it was, he was perfectly satisfied with his conduct on the occasion; when it was actually in evidence that no interpreter whatsoever was present.—Now, said Mr. Sheridan, how I, by merely looking into a book, could *intimate* the presence of an interpreter, could *inculcate* the assistance of Major Davy, and could also *look* the satisfaction conceived by Sir Elijah Impey, are questions which I believe that Gentleman alone is able to determine!

He should admit, however, he said, that Sir Elijah Impey had not strictly attended to forms on the occasion of taking those affidavits; that he had merely directed the Bible to be given to the Whites, and the Koran to the Blacks, and had packed up in his wallet the returns of both without any further enquiry; or that he had glanced over them in India, having previously cut off all communication between his *eye* and his *mind*, so that no consciousness was transferred from the former to the latter; and that he had read them in England, if possible, with less information:—however strange these circumstances might be, he would admit them all;—he would even admit, that the affidavits were legally and properly taken, and yet would prove that those affidavits were not sufficient to sustain any one point of criminality against those who were the subjects of the present charge.

After some brief observations on some parts of the affidavits, particularly on those of a native officer, who, as Mr. Sheridan observed, gave a specimen of *platoon* firing in his evidence, by giving three affidavits in one day;* he concluded with

"He had sworn once—then again—and made nothing of it: then comes he, with another, and swears a third time—and in company does better. *Singh-banded* he can do nothing—but succeeds by *platoon* swearing and *volleys of oaths!*"

observing, that as it would tend very much to abbreviate the discussion of the present charge, to enter more largely into the tendency of those affidavits, he should therefore make a pause for the present, and take the liberty of calling the attention of their Lordships more particularly to this point on an ensuing day.

At half past four o'clock the Court adjourned to Friday next.

THIRTY-THIRD DAY.

FRIDAY, JUNE 6.

The Court being seated at half past twelve, after a short pause, Mr. Sheridan resumed his speech, by expressing his satisfaction, that in the interval of the adjournment, the remaining part of the evidence, &c. had been printed and laid before their Lordships; as it was the wish of the Managers that every document should be before the Court at the time, for the purpose of determining with more accuracy whether they had or had not borne out the charges which they presented.

Recurring then to the affidavits taken by Sir Elijah Impey at Lucknow, they formed, he observed, a material article in the defence of Mr. Hastings; and on the decision of their Lordships respecting the weight of the allegations which they contained, a great part of this question would finally depend. With respect to one part of the charge made on the Begums—their having shewn an uniform spirit of hostility to the British Government—it had not only failed, but was absolutely abandoned by the Counsel for the prisoner, as not being supported by a title of evidence. In deciding on the other parts of this charge—their having committed an overt-act of rebellion—their having inflamed the Jaghirdars, and excited the discontents in Oude—their Lordships were to consider the situation in which Mr. Hastings stood at the time these charges were made. Having failed in his attempt at Benares, his mind was entirely directed to the treasures of the Begums. He knew that such was the situation into which he had plunged the affairs of the Company, that he knew he could not address his vernal masters, unless some treasure was found. He had therefore stood forwards as an accuser, where he was also to preside as a judge;—and with much caution should that judge be heard, who has apparently a profit on the conviction, and an interest in the condemnation of the party to be tried. He would not from this infer, however, that the charge was groundless; but he would argue, that until fully prov-

ed, it should not meet with implicit credit. It was obvious also that the attempt said to have been made by the Begums to dethrone the Nabob and extirpate the English, was in the highest degree improbable; but he would not infer from thence, that it was impossible.—There is in human nature a perverse propensity to evil, which had sometimes caused the perpetration of bad acts without any obvious gratification resulting to the perpetrator. All he should claim, therefore, was, that the accusations brought by Mr. Hastings against the Begums, should undergo a candid examination, and that probable evidence, at least, should be brought to the support of charges in themselves improbable.

Mr. Hastings in his defence had complained, that his prosecutor had attempted to blacken these affidavits as rash, irregular, and irrelevant; when they had been authenticated by the presence of Sir Elijah Impey, and as he also observed, being taken in an enquiry, directed solely to establish the guilt of Cheyt Sing, they were merely an accessory evidence in the present case, and were therefore less liable to suspicion. The reasoning in this last instance, Mr. Sheridan observed, would undoubtedly be good; but that the assertion that the enquiries were exclusively directed to the crimination of Cheyt Sing, had been proved an absolute falsehood, as they were really intended to justify what was afterwards to be done. With respect to the epithets bestowed on those affidavits by his Honourable Friend, the truth would best appear from a review of their contents.—Mr. Sheridan then proceeded to remark on the affidavits severally, as far as they related to charges against the Begums. Those of the Jemmadars, or native subaltern officers, contained nothing, it appeared, but vague rumour and improbable surmise.

One deponent, that was a black officer in one of our regiments of Sepoys, stated, that having a considerable number of people as hostages, in a fort where he commanded, and who had been sent thither by Colonel Hannay, the country people got round the fort, and demanded that they should be delivered up; but instead of complying with their request, he put almost twenty of them to death; he afterwards threw down some of the battlements of the fort, and killed four more of the hostages; and, on another day, the heads of 18 more were struck off, and among them the head of a great Rajah of the country, by order of Colonel Hannay.

The people round about were enraged at this execution, and crowded about the fort : some of them were heard to say that the Begums had offered a reward of 1000 rupees for the head of every European, 100 for the head of every Sepoy Officer, and 10 for the head of a common Sepoy.—But it appeared afterwards pretty clearly that no such rewards had in reality been offered ; for when Captain Gordon's detachment took the field, the people who surrounded him told him, that if he would deliver up his arms and his baggage, they would let him and his men continue their route unmolested : so little were they disposed to enrich themselves by the slaughter of the British forces, that when Captain Gordon's detachment was reduced by desertion to *ten* men, and when the slaughter or capture of them would have been of course a work of very little difficulty, the country people remained satisfied with the dispersion of the detachment, and then returned to their homes, without attempting to attack the poor remains of that detachment, the *ten* men who continued with Captain Gordon. That gentleman, in his affidavit, *supposed* the Begums to have encouraged the country people to rise, because when he arrived at the bank of the river *Saunda Nutta*, on the opposite bank of which stands the town of Saunda, the Fowzdar, or Governor, who commanded there for the *Bow Begum*, in whose jaghire the town lay, did not *instantly* send boats to carry him and his men over the river, and because the Fowzdar pointed two or three guns across the river. Now, admitting both these facts to be true, they could not affect the Begums ; for it was the duty of the Fowzdar to be on his guard, and not to let troops into his fort, until he knew for what purpose they appeared before it. In the next place, there was nothing in the affidavit which indicated that the guns were pointed against *Captain Gordon and his men* ; on the contrary, it was possible that these guns had made that gentleman's pursuers disperse ; for it was rather remarkable, that they should pursue him whilst he was *in force*, and should give over the pursuit, when, by the desertion of his soldiers, his detachment was reduced to *ten* men. However, whatever might have been the cause of their dispersion, Captain Gordon at length got across the river, and found himself in a place of *safety*, as soon as he got into a town that was under the authority of the Begums, who caused him to be sent afterwards under a protecting guard *Colonel Hannay*. This circumstance

was suppressed in the affidavit made afterwards by Captain Gordon ; for what purpose it was not for him to judge.

Hyder Beg Cawn, the Minister of the Nabob, though swearing both to rumour and to fact, could mention no particulars of an insurrection which was to have dethroned his Sovereign. Nor was the evidence of Col. Hannay and the other English Officers more conclusive : loud suspicions appeared to have been propagated at a time of general disturbance, and when the flames of war were raging in the neighbouring province of Benares. Mr. Middleton, though swearing after he had received his final orders from Mr. Hastings respecting the seizure of the treasures, could only say, that he believed the Begums had given countenance to the rebels, and, he had heard, some aid. The whole of the depositions, Mr. Sheridan observed, were so futile, that were they defended in an inferior court of justice, he was convinced he should be forbidden to reply, and told that he was combating with that which was nothing !

With respect to the first part of the charge, the *rebellion* of the Begums, he could find no trace of any such transaction.

"The best antiquarian in the Society," said Mr. Sheridan, "would be, after all, 'never the wiser!—Let him look where he would, where can he find any vestige of battle, or a single blow? In this rebellion, there is no soldier, neither horse nor foot : not a man is known fighting : no office order survives, not an express is to be seen. This Great Rebellion, as notorious as our *Forty-five*, passed away—unnatural, but not raging—*beginning in nothing*—and ending, no doubt, just as it began !

"If rebellion, my Lords, can thus form unseen, it is time for us to look about us. What hitherto has been *dramatic*, may become *historical*. Knight's bridge may at this moment be invested ; and all that is left us, nothing but the forlorn hope—of being dealt with according to the statute—by the found of the Riot Act—and the sight, if it can be, of another *Elijah* !

The Counsel had thought proper to dwell for a time on the Nabob's going to Fyzabad, on his return from Chunar, attended by a guard of 2000 men. Mr. Middleton being asked, whether these men were well-appointed, though on another occasion he had declared himself no military man, caught in the instant a *gleam of martial memory*, and answered in the affirmative.

affirmative. The contrary, however, was proved by the evidence of Capt. Edwards, who attended the Nabob as his Aid-de-Camp, and also that those troops were actually mutinous for their pay, who were then taken to stop the progress of disaffection! Yet he would agree to all that the Council required;—he would suffer the whole 2000 men to enter full trot into the city of Fyzabad — “while Middleton stood by out of his wits, with a gleam of martial memory, and while Sir Elijah, like a man going to learn fashions in France, or freedom in England, takes a sportive tour, as smooth and well-beaten as *Old Brentford*,” for Captain Edwards had fully proved, that it was merely the *usual guard* of the Nabob.—It would therefore have been disrespectful to have gone with less attendance; he could have no motive for going *incog.* unless he might have intended to make himself a perfect match for the insurrection, which was also *incog.* or thought that a *rebellion* without an *army*, would be most properly subdued by a *Prince* without a *guard*.

Another supposed proof of the disaffection of the Begums was brought, by alleging that 1000 *Nudgies* had been raised at Fyzabad, and sent to the assistance of Cheyt Sing, and this for no other reason than a detachment of the same number was in the list of the forces of that Rajah! This single circumstance was taken as full and complete evidence of the identity of those troops. It was no matter that the Officer second in command with Cheyt Sing had sworn that the detachment came from Lucknow, and not from Fyzabad.

This Mr. Hastings would have to be a trifling mistake of one capital for another!—The same Officer, however, had also deposed, that the troops were of a different description; those of the Begum being swordsmen, and those in the service of the Rajah, matchlock men. The inference to be made therefore undoubtedly was, that the detachment did actually come from Lucknow; not sent perhaps by the Nabob, but by some of the Jaghirdars, his favourites, who had abundant power for that purpose, and whose aversion to the English had always been avowed. The name of Sadib Ally, his half-brother, had been mentioned as being highly criminal in these transactions;—but to the question, why he was not punished? Sir Elijah Impey had given the best answer at that bar, by informing their Lordships that Sadib Ally was miserably poor! He had therefore found protection in his *poverty*, and safety in his *insolvency*. Every common maxim of judging on such occasions was certain to be overturned by Mr. Hastings.—It was generally supposed that the needy were the most daring, and that necessity was the strongest stimulus to innovation. But the Governor-General inverting this proposition, had laid it down as an axiom—that the actions of the poor were sufficiently punished by contempt—that the guilt of an offender should increase in a precise ratio with his wealth—and that, in fine, where there was no *treasure*, there could undoubtedly be no *treason*!

Mr. Sheridan next read the letter of the Begum * to Mr. Hastings, complaining of the suspicions which had been so un-

* The letter was as follows:—“The disturbances of Col. Hannay and Mr. Gordon were made a pretence for seizing my jaghire. The state of the matter is this:—When Colonel Hannay was by Mr. Hastings ordered to march to Benares during the troubles of Cheyt Sing, the Colonel, who had plundered the whole country, was incapable of proceeding, from the union of thousands of Zemindars, who had seized this favourable opportunity; they harassed Mr. Gordon near Junivard, and the Zemindars of that place and Acherpore opposed his march from thence, till he arrived near Saunda. As the Saunda Nutta, from its overflowing, was difficult to cross without a boat, Mr. Gordon sent to the Fowzdar to supply him: he replied, the boats were all in the river; but would assist him, according to orders, as soon as possible. Mr. Gordon’s situation would not admit of his waiting; he forded the Nutta upon his elephant, and was hospitably received and entertained by the Fowzdar for six days. In the mean time, a letter was received by me from Col. Hannay, desiring me to escort Mr. Gordon to Fyzabad. As my friendship for the English was always sincere, I readily complied, and sent some companies of Nejeebs to escort Mr. Gordon and all his effects to Fyzabad; where, having provided for his entertainment, I effected his junction with Colonel Hannay. The letters of thanks received from both these gentlemen; upon this occasion, are still in my possession, copies of which I gave in charge to Major Gilpin, to be delivered to Mr. Middleton, that he might forward them to the Governor-General. To be brief, those who have loaded me with accusations, are now clearly convicted of falsehood. But is it not extraordinary, that, notwithstanding the justice of my cause, nobody relieves my misfortunes! My prayers have been constantly offered to Heaven for

justly raised of her conduct; and referring to Capt. Gordon, who could testify her innocence. He also read the letter of Capt. Gordon to the Begum *, thanking her for her interference, and acknowledging that he owed his life to her bounty.

had been asked, with an air of *sovereign triumph*, why Capt. Gordon was not called to that bar? He had answered then as now, that he would not call on a man who, in his affidavit, had suppressed all mention of this important transaction. He trusted, that if ever he saw him at that bar, he should witness a contrite zeal to do away the effects of that silence, and behold a penitential tear for the part he had then taken. He hoped, however, for the honour of human nature, that Capt. Gordon was then under a delusion—and that he was led on by Mr. Middleton, who was well informed of the business, to act a part of which he did not know the consequences. Every feeling of humanity recoiled from the transaction taken in any other point of view. It was difficult to imagine that any man could say to a benefactor, “The breath that I now draw, next to Heaven, I owe to you;—my existence is an emanation from your bounty—I am indebted to you beyond all possibility of return, and therefore, —my gratitude shall be your *destruction*.”

The original letters on this occasion from Colonel Hannay and Captain Gordon to the Begum, had been transmitted

by her through Major Gilpin to Mr. Middleton, for the purpose of being shewn to Mr. Hastings; but the leaves were torn from Mr. Middleton's letter-book in the place where they should have appeared. When examined on this subject, he said, that he had deposited Persian copies of those letters in the office at Lucknow, but that he did not bring translations with him to Calcutta—because he left Lucknow the very day after he had received the originals. This excuse, Mr. Sheridan said, he could boldly assert, was a *flat and decided perjury* †! It could be proved, by corresponding dates, that Middleton had received those letters at least a month before he left Lucknow. He departed from that city on the 17th of October, but must have received those letters before the 20th of the preceding month. He was therefore well aware of the purity of those in whose oppression he was engaged; he knew that their attachment was fully proved, at the very time when they were charged with disaffection; but as their punishment was predetermined, he, in concert with his principal, found it necessary to suppress the testimonials of their innocence.—This mass of fraud and cruelty, covered as it had been by every art which the vile agents could devise, was now bare to the view, by the aid of that Power who can give a *giant's nerve* even to an *infant arm*. The injured sufferers, with tears more powerful than argument, and with sighs more impressive than eloquence,

“for your arrival; report has announced it, for which reason I have taken up the pen, and request you will not place implicit confidence in my accusers, but weighing in the scale of justice *their falsehoods* and *my representations*, you will exert your influence in putting a period to the misfortunes with which I am overwhelmed.”—Here Mr. Sheridan remarked, that the plain and simple language of truth gave to the representations of the Begum an Herculean force; her complaints were eloquence, her supplications persuasion, and her remonstrances conviction.

* The letter was as follows:—“Begum Saib, of exalted dignity and generosity, &c. whom God preserve.

“After presenting the usual compliments of servitude, &c. in the customary manner, my address is presented.

“Your gracious letter, in answer to the petition of your servant from Goondah, exalted me. From the contents I became unpeakably impressed with the honour it conferred.

“May the Almighty protect that royal purity, and bestow happiness, increase of wealth and prosperity.

“*The welfare of your servant is entirely owing to your favour and benevolence, &c. &c.*”

† In this evidence, Mr. Sheridan said in expressive terms, “there appeared *flat perjury*!—enormity, if it was so, beyond all expectation, made manifest—by that Power, to whose nod all creatures must bend—to whom nothing, in the whole system of thought or action, is impossible—who can invigorate the arm of infancy with a giant's nerve—who can bring light out of darkness, and good out of evil—can rive the confines of hidden mischief, and drag forth each minute of guilt from amidst his deeds of darkness and disaster—reluctant, alas! and unrepenting—to exemplify at least, if not *stop*—and to qualify any casual sufferings of innocence by the *dead doom* of its opposite—*to prove* there are the *never-failing* collections of God, to make *flaunt* the obliquity of *supp.*

supplanted their Lordships justice, and called for that retribution which should take place on the detested but unrepenting author of their wrongs !

The benevolent interference of the Begum in favour of Capt. Gordon, had been assigned by Mr. Hastings in his defence, to her intelligence of the successes of the English at that period.—That this allegation was founded in manifest falsehood, could very easily be proved.—The only success which the British forces at that time met with, was that of Colonel Blair on the 3d of September, but where he himself acknowledged that another victory gained at such a loss, would be equal to a defeat.—The reports spread around the country at the time were of the most unfavourable cast—that Mr. Hastings had been slain at Benares, and that the English were every where routed.—These reports, it was to be remarked, were of infinitely more consequence to the present argument, than the facts which really occurred ; but if any doubt remained on the mind of any man, it was only necessary to recur to a never-failing evidence, in that of Mr. Hastings against himself.—In a letter to the Council, which was on record, Mr. Hastings acknowledged, that from the 1st of August to the 22d of September, which included of course the time of Captain Gordon's liberation, he had been confined in a situation of the utmost hazard ; that his safety during that time was extremely precarious ; and that the affairs of the English were generally thought to be unfavourable in the extreme ! In his defence, however, these admissions were totally forgotten. There was also an observable inconsistency in what was there alledged—that Colonel Hannay had written to the Begum in the style of supplication—because, in the desperate situation of affairs, he knew of no other which he could adopt ; and yet, in the same sentence it was avowed, that the Begum had procured the release of Capt. Gordon—from her knowledge of the prosperous advances of our army !—It appeared, therefore, beyond the possibility of a doubt, that those Princesses had demonstrated the firmness of their attachment to the English, not in the moment of success—not from the impulse of fear, nor from the prospect of future protection ;—but at a time when the hoard of collected vengeance was about to burst over our heads ; when the measure of European guilt in India appeared to be completely filled, by the oppressions which had just then been exercised on the unfor-

nate Cheyt Sing ; and when often Heaven seemed to interfere, to check the meek disposition of the natives, awaken their resentments, and to inspire their revenge !

The second of the remaining parts in the charge against the Begums, was their having inflamed the Jaghirdars. It was evident, however, even from the letters of Mr. Middleton himself, that no such aid was wanted to awaken resentments, which must unavoidably have arisen from the nature of the business.—There were many powerful interests concerned ;—the Jaghires which were depending were of a vast amount, and as their owners by the resumption would be reduced at once to poverty and distress, their own feelings were sufficient to produce every effect which had been described. It was idle, therefore, to ascribe to the Begums, without a shadow of proof, the inspiring of sentiments which must have existed without their interference. “ I shall not wait the time of the Court,” said Mr. Shridan, “ on such a subject, but appeal to your Lordships individually to determine, whether on a proposal being made to confiscate your several estates—and the magnitude of the objects are not very unequal—the interference of any two Ladies in this kingdom would be at all necessary to awaken your resentments, and to rouse you to opposition,” &c.

The disscontents which prevailed in the province of Oude had been also, and with similar justice, attributed to these Princesses, and formed the third and last article of charge against them. But the conduct of the officers residing in that province, the repeated complaints from the natives, and the acknowledged rapacity of Col. Hannay, left no difficulty in tracing those disscontents to the source where they had originated. The Nabob himself was so well convinced of the tyranny of Col. Hannay, that on a proposition coming from Mr. Hastings to send him back into the province, the Nabob swore by Mahomet, “ That if the Colonel was sent back, he would quit the province, and come to reside with Mr. Hastings.” The Governor-General some time after sent an apology for the suggestion, but it was then too late—Col. Hannay was dead—and the province was desolate !

“ Should a stranger survey the land formerly Sujah Dowla's, and seek the cause of its calamity—should he ask, what monstrous madness had ravaged thus, with wide-spread war—what desolat-

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foreign foe—what disputed succession—what religious zeal—what fabled monster has stalked abroad, and with malice and mortal enmity to man, has withered with the gripe of death every growth of nature and humanity—all the means of delight, and each original, simple, principle of bare existence? the answer will be, if any answer *dare* be given, No, alas! not one of these things! no desolating foreign foe!—no disputed succession! no religious superserviceable zeal! This damp of death is the mere effusion of British animity—we sink under the pressure of their support—we wither under the gripe of their pestiferous alliance!

Thus they suffered—in barren anguish, and ineffectual bewailings. And, O audacious fallacy!—says the defence of Mr. Hastings—What cause was there for any incidental ills, but their own resistance?

“The cause was nature in the first-born principles of man. It grew with his growth; it strengthened with his strength! It taught him to understand; it enabled him to feel. For where there is human fate, can there be a penury of human feeling?—Where there is injury, will there not be resentment?—Is not despair to be followed by courage? The God of Battles pervades and penetrates the inmost spirit of man, and rousing him to shake off the burthen that is grievous, and the yoke that is galling, will reveal the law written in his heart, and the duties and privileges of his nature—the grand, universal compact of man with man!—That power is delegated in trust, for the good of all who obey it—That the rights of men must arm against man’s oppression—for that indifference were treason to human state, and patience nothing less than blasphemy—against the laws which govern the world!”

That this representation was not exaggerated, would appear from the description of Major Naylor, who had succeeded Col. Hannay, and who had previously freed him from the vengeance which the assembled *Ryots* or husbandmen were about to take on their oppressor. The progress of extortion, it appeared, had not been uniform in that province:—it had absolutely increased as its resources failed, and the labour of exaction became more difficult, the price of that increased labour had been charged as an additional tax on the wretched inhabitants!—At length,

even in their meek bosoms, where *injury* never before begot *resentment*, nor *despair* aroused to *courage*, increased oppression had its due effect. They assembled round their oppressor, and had nearly made him their sacrifice. So deeply were they impressed with the sense of their wrongs, that they would not accept of even life from those who had rescued Col. Hannay! They presented themselves to the swords of the soldiery, and as they lay bleeding on the banks of their sacred stream, they comforted themselves with the ghastly hope, that their blood would not descend into the soil, but that it would ascend to the view of the God of Nature, and there claim a retribution for their wrongs!—Of a people thus injured, and thus feeling, it was an audacious fallacy to attribute the conduct to any external impulse.—That God, who gave them the *form of man*, implanted also the wish to vindicate the *rights of man*. Though simple in their manners, they were not so uninformed as not to know—that Power is in every state a trust reposed for the general good; and that the trust being once abused, should of course be instantly resumed.

Though the innocence of the Begums, Mr. Sheridan continued, was thus proved beyond a possibility of doubt, it could not but be allowed that he argued fairly, if he did not immediately infer, from that proof, the guilt of Mr. Hastings. He would go so far as to admit, that Mr. Hastings might have been deluded by his accomplices, and have been persuaded into a conviction of a criminality which did not exist. If that were proved, he would readily agree to acquit the prisoner of the present charge. But if, on the contrary, there appeared, in his subsequent conduct, such a concealment as denoted the fullest consciousness of guilt; if all his variations of the business were marked with inconsistency and contradiction, that mind must be inaccessible to conviction, which could entertain a doubt of his criminality.—From the month of September, in which the seizure of the treasures took place, until the January following, had Mr. Hastings wholly concealed the transaction from the Council at Calcutta! If any thing could be more singular than this concealment, it was the reasons by which it was afterwards attempted to be justified. Mr. Hastings first pleaded a *want of leisure*. He was writing to the Council at a time when he complained of an absolute inaction:—he found time to narrate some pretty Eastern tales, respecting the attachments

tachment of the Sepoys to their *canon*, and their dressing them with flowers on particular occasions—but of a rebellion which convulsed an empire—of the seizure of the treasures to such an amount, he could not find leisure to say one syllable, until he had secured an excuse for his conduct in the possession of the money.—The second excuse was, that all communication was cut off with Fyzabad; and this was alledged at the time when letters were passing daily between him and Mr. Middleton, and when Sir Elijah Impey had pronounced the road to be as free from interruption as that between London and Brentford.—The third excuse was, that Mr. Middleton had taken with him on his departure from Chunar all the original papers which it was necessary for Mr. Hastings to consult!—That the original papers had not been removed was evident, however, from Mr. Hastings sending a copy of the treaty of Chunar to Mr. Middleton, on the fourth day after the Resident's departure; though it appeared that it was re-enclosed at a proper time to Mr. Hastings, to be shewn to the Council. A copy of the same had been shewn to the Oriental Grotius, Sir Elijah Impey, which he confessed his having read at the time when he declared his ignorance of the guarantee granted to the Princesses of Oude! Looking to the absurdity of reasons such as these assigned in defence of a silence so criminal; Mr. Sheridan declared, that he would lay aside every other argument—that he would not dwell on any other topic of guilt, if the Council for Mr. Hastings would but join issue on this point, and prove, to the satisfaction of the Court, that any of these excuses were in the smallest degree sufficient for the purpose for which they were assigned.

Amidst the other artifices of concealment, was a letter from Col. Hannay, dated October 17, 1781, which Mr. Sheridan proved beyond dispute could not have been written at the time, but was fabricated at a subsequent period, as it contained a mention of facts, which could by no possibility have been known to Col. Hannay at the time when it was pretended to have been written. Whatever else could be done for the purpose of concealment was done in that mixture of canting and mystery, of rhapsody and enigma—"Mr. Hastings' Narrative of his Journey to Benares."—He there set out with a solemn appeal to Heaven for the truth of his averments, and a declaration of the same purport to Mr. Wheeler: The faith, however, thus pledged, was broken

both to God and man, for it was already in evidence; that no single transaction had occurred as it was there stated!

The question would undoubtedly occur to every person who had attended these proceedings—"Why Mr. Hastings had used all these efforts to veil the whole of this business in mystery?"—It was not strictly incumbent on him to answer the question, yet he would reply, that Mr. Hastings had obviously a *bloody* reason for the concealment.—He had looked to the natural effect of strong injuries on the human mind; as in the case of Cheyt Sing, he thought that oppression must beget resistance; and the efforts which might be made by the Begums in their own defence, though really the effect, he was determined to represent as the *cause* of his proceedings.—Even when disappointed in those aims by the natural meekness and submission of those with whom he was to act, he could not abandon the idea,—and accordingly in his letter to the Directors, of January, 1782, had represented the subsequent disturbances in Oude, as the positive cause of the violent measures which he had adopted—*two months* before those disturbances had existence!—He there congratulates his masters on the seizure of those treasures which, by the law of Mahomer, he assures them were the property of Asoph ul Dowlah. Thus the perturbed spirit of the Mahometan law, according to Mr. Hastings' idea, still hovered round those treasures, and envied them to every possessor, until it at length saw them safely lodged within the *sanctuary* of the British Treasury!—In the same spirit of piety, Mr. Hastings had assured the House of Commons, that the inhabitants of Asia believed that some unseen power interfered, and conducted all his pursuits to their destined end.—That Providence, however, which thus conducted the efforts of Mr. Hastings, was not the Providence to which others profess themselves indebted; which interferes in the cause of virtue, and insensibly leads guilt towards its punishment; it was not, in fine, that Providence

"Whose works are goodness, and whose ways are right."

The unseen power which protected Mr. Hastings, operated by leading others into criminality, which, as far as it respected the Governor-General, was highly fortunate in its effects.—If the Rajah Nundocomar brings a charge against Mr. Hastings, Providence so orders it, that

Rajah has committed a *forgery* some time before, which, with some *friendly* *blance*, proves a sufficient reason to reject out of the way so troublesome an *aintenance*.—If the Company's affairs are deranged through the want of *prudence*, Providence ordains it so that the *gains*, though *unconsciously*, fall into *rebellion*, and give Mr. Hastings an opportunity of seizing on their treasures!—Thus the successes of Mr. Hastings depended not on any positive merit in himself; it was to the inspired *felonies*, the *even-born crimes*, and the providential *seasons* of others that he was indebted for each success, and for the whole tenor of his prosperity!

It must undoubtedly bear a strange appearance, that a man of reputed ability should, even when acting wrongly, have had recourse to so many bungling artifices, and spread so thin a veil over his deceptions. But those who testified no surprise at this circumstance, must have attended but little to the demeanor of Mr. Hastings. Through the whole of his conduct, he seemed to have adhered to one general rule—to keep as near as possible off the fact which he was to relate!—Observing this maxim, his only study was to lay a foundation as *sanctified* and as ornamented as possible; then by a superadded mass of fallacies, the superstructure was soon complete, though by some radical defect it never failed to tumble on his own head: rising from those ruins, however, he was soon found rearing a similar edifice, but with a like effect.—Delighting in difficulties, he disdained the plain and secure foundation of truth; he loved, on the contrary, to *build on a precipice*, and to *encamp on a mine*.—Inured to falls, he felt not the danger, and frequent defeats had given him a hardihood, without impressing a sense of the disgrace.

It had been a maxim once as much admitted in the practice of common life, as in the school of philosophy, that where heaven was inclined to destroy the vice, it began by debasing the intellect. This idea was carried still farther by the Right Hon. Gentleman, Mr. Burke, who opened the prosecution, who declared that *prudence* and *vice* were things absolutely incompatible;—that the vicious man being deprived of his best energies, and curtailed in his proportion of understanding, was left with such a short-sightedness of penetration, as could not come under the denomination of *prudence*.—This sentiment did honour to the name

of his Right Hon. Friend, “to whom,” said Mr. Sheridan, “I look up with homage!—whose genius is commensurate to philanthropy—whose memory will stretch itself beyond the fleeting objects of any little partial shuffling—through the whole wide range of human knowledge, and honourable aspiration after human good—as large as the system which forms life—as lasting as those objects that adorn it.”

But it was still to be remembered, that there were other characters beside a Cæsar, and a Cromwell, who, acting on determinations inimical to virtue, and hostile to the laws of society, had proceeded, if not with *prudence*, yet with an all-commanding *sagacity*, that was productive of similar effects. Those, however, were isolated characters, which left the vice that dared to follow either in a state of despondent vassalage, or involved it in destruction. Such was the present instance of failure, and such it was always to be trusted would be that of every other who regarded such characters with an eye of emulation. Such was the perpetual law of Nature, that virtue, whether placed in a circle more contracted or enlarged, moved with sweet content in its allotted orbit;—there was no dissonance to jar, no asperity to divide;—and that harmony which made its felicity, at the same time constituted its protection.—Of vice, on the contrary, the parts were disunited, and each in barbarous language clamoured for its pre-eminence.—It was a scene where though one domineering passion might have sway, the others still pressed forward with their dissonant claims, and in the *moral world*, effects still awaiting on their causes, the discord of course ensured the defeat.

Mr. Sheridan reverted again to the subject of the claims made on the Princesses of Oude—Whether those were first made by the Nabob, or suggested to him by his Sovereign, Mr. Hastings, though the Counsel had laboured much to prove the former, appeared to him to carry very little difference. If the seizure was made as a *confiscation* and punishment for supposed guilt—then, if ever there was a crime which ought to pass “unwhipped of justice,” it was that where a son must necessarily be made the instrument of an infiction, by which he broke his covenant of existence, and violated the condition by which he held his rank in society. If, on the contrary, it was meant as a *resumption*, in consequence of a supposed right in the Nabob, then Mr. Hastings should

have

have recollected the guarantee of the Company granted to the Begums; unless it was meant to say, that Mr. Hastings acted in that as in other instances, and assured them of his protection;—until the very moment when it was wanted.—It was idle, however, to dwell on the conduct or free agency of a man who, it was notorious, had no will of his own. What Mr. Middleton asserted at that bar, would scarcely be put in competition with a series of established facts; by which it appeared, that the Nabob had submitted to every indignity, and yielded to every assumption.—It was an acknowledged fact, that he had even been brought to join in that paltry artifice which had been termed the subornation of letters. This practice was carried to such a length, that he in the end complained, in a manner rather ludicrous, that he was really tired of sending different characters of Mr. Bristow, in pursuance of the directions sent to the Resident.—He had pronounced black white and white black so often, that he really knew not what to say; and therefore begged that, once for all, the friends of Mr. Hastings might be considered as his, and that their enemies might also be the same. After this it was superfluous to argue that the Nabob could direct his views to so important an object as the seizing of the treasures, unless he had been impelled by Mr. Middleton, and authorized by Mr. Hastings!

At half past four o'clock, Mr. Sheridan being apparently exhausted, by a speech of four hours continuance, the Court adjourned.

THIRTY-FOURTH DAY.

TUESDAY, JUNE 10.

The Lord Chancellor not having had it in his power to attend the Court this day, Earl Bathurst presided in his room, and took his seat upon the woolsack. His Lordship having called upon the Commons to proceed,

Mr. Sheridan rose. He said, that relying upon the attention with which he was honoured the last time he had the honour of addressing their Lordships, he would not recapitulate on this occasion what he had said on Friday, to shew that the Nabob of Oude had been reduced by Mr. Hastings to the degraded state of a dependent Prince, who had no will of his own, but was obliged to pursue any measure which Mr. Hastings was pleased to dictate to him. The Counsel for the prisoner had laboured to impress their Lordships with an idea, that the Nabob was a

Prince sovereignly independent, and in no degree subject to the controul of Mr. Hastings; but after the numberless proofs that had been given of his being a tyrant in the hands of the Governor-General, it would be incumbent on the Counsel to prove his independence by very strong evidence indeed; and he believed, that in the affair of the resumption of the jaghires, and the seizure of the treasures in particular, they would find it a very difficult matter to execute such a task. The Hon. Managers had asserted, that the measure of seizing the treasures had originated with Mr. Hastings, and they had given in evidence many strong proofs in support of the assertion; it would be incumbent therefore on the Counsel to prove, that the measure had originated with the Nabob; and of that they could not give a more satisfactory proof than the paper or instrument, in which it was originally proposed by him to Mr. Hastings; but as he believed no such proposition ever came from the Nabob, as an original measure, so he took it for granted, that the Counsel could never produce any letter or paper from that Prince, containing any such proposition, as coming immediately from himself.

The seizure of the treasures and the jaghires was the effect of a dark conspiracy, in which no more than six persons were concerned. Three of the conspirators were of a higher order—their were Mr. Hastings, who might be considered as the principal and leader in this black affair; Mr. Middleton, the English Resident at Lucknow; and Sir Elijah Impey—the three inferior or subordinate conspirators were, Hyder Beg Khan, the nominal Minister of the Nabob, but in reality the creature of Mr. Hastings; Colonel Munney, and Ali Ibrahim Khan.

Sir Elijah Impey was intrusted by Mr. Hastings to carry his orders to Mr. Middleton, and to concert with him the means of carrying them into execution. As this gentleman was a principal actor in this iniquitous affair, Mr. Sheridan thought it would be necessary to take notice of some parts of the evidence which he had delivered upon oath at their Lordships bar.

When Sir Elijah was asked, what became of the Persian affidavits (sworn before him) after he had delivered them to Mr. Hastings?—he replied, that he really did not know. He was asked, if he had got them translated, or knew of their having been translated, or had any conversation with Mr. Hastings on the sub-

of the affidavits?—He replied, that he knew nothing at all of their having been translated, and that he had no conversation whatever with Mr. Hastings on the subject of the affidavits after he had delivered them to him. He was next asked, whether he did not think it a little singular, that he should not have held any conversation with the Governor-General, on a subject of so much moment as was that of the affidavits he had taken? His answer was, that he did not think it singular; and his reason for thinking it was not, was, that he left Chunar the very day after he delivered the affidavits to Mr. Hastings. From this answer their Lordships might infer, that Sir Elijah, on quitting Chunar, had left the Governor-General behind him; but Mr. Sheridan said, he would prove that this was by no means the case; for, from letters written by Sir Elijah himself, and which had been read in evidence, it appeared, that he arrived at Chunar the 1st of December 1781; that he then began to take affidavits; that having completed that business, he and Mr. Hastings left Chunar together, and set out on the road to Benares; and that, having been together from the first to the sixth of December, the former took leave of the latter, and proceeded on his way to Calcutta.—Here Mr. Sheridan left their Lordships to judge, how far Sir Elijah Impey had or had not attempted to impose upon them, when he said, that his reason for not thinking it singular, that he should not have had any conversation with Mr. Hastings on the subject of the affidavits, after he had delivered them to that gentleman, was,—*that he left Chunar the very next day.*—The inference was, that *therefore* he could not have conversed with him; but now their Lordships must see that such an inference would be false, as Sir Elijah left Chunar in company with the Governor-General, and continued with him till the 6th of December. If, then, the answer made by Sir Elijah was so worded, as to lead to a false inference, it would be for their Lordships to judge, whether the whole of his evidence, on that point, was or was not calculated to mislead and deceive them.

There was another part of the same gentleman's evidence, which he would prove was not entitled to any credit from their Lordships. Sir Elijah had *sworn*, that he knew nothing of the Persian affidavits having been translated. Now it so happened, that a letter from Major William Davy, the confidential Secretary of

Mr. Hastings, and Persian translator, had been read to their Lordships in evidence, from which it appeared, that he had made an affidavit *before* Sir Elijah Impey himself, at Buxar, on the 12th of December, just six days after that gentleman and Mr. Hastings parted, the purport of which was, that the papers annexed to the affidavit were faithful translations of the Persian affidavits (also annexed) taken by Sir Elijah; the date (the 12th of December) appeared no fewer than *six times* in Major Davy's depositions, so that there could not be any mistake in it; it was sworn before Sir Elijah, and *was signed by him*; and yet, that gentleman had *sworn*, before their Lordships, that he had never heard of any translation of those Persian affidavits. Upon these two circumstances, Mr. Sheridan said, he would make only one remark, which had been used by a very great man, "*That no one could tell where to look for truth, if it could not be found on the Judgment Seat, or know what to credit, if the affirmation of a Judge was not to be trusted.*"

Sir Elijah Impey, as he had observed before, was intrusted by Mr. Hastings to concert with Mr. Middleton the means of carrying into execution the orders of which Sir Elijah was the bearer from the Governor-General to the Resident. These orders did not appear any where in *writing*; but their Lordships had been made acquainted with the purport of them by the most satisfactory evidence: they therefore knew, that Mr. Middleton was, in obedience to them, to persuade the Nabob to propose, as from himself, to Mr. Hastings, the seizure of the Begums' treasures.—That this was the real fact, would appear unquestionable, from the general tenor of Mr. Middleton's letters on the subject, and from Mr. Hastings's own account of the business in his defence.—The latter appeared to be extremely at a loss how to act about the treasures.—The (supposed) rebellion of the Begums made it extraordinary, that, at the moment when he was confiscating their estates, he should stipulate, that an annual allowance, equal to the produce of those estates, should be secured to them: he found himself embarrassed how to proceed also respecting the treasures; for, on the one hand, he did not wish to appear the principal mover in seizing them, and yet he did not hesitate to charge them with treason and rebellion, for which he might have seized them as forfeited to the state. In the latter case, it looked as if

he feared to do what the treason of the Begums would have justified him in doing. His embarrassments on this occasion proved, that he was conscious of the injustice of his proceedings against those ladies.—If they were notoriously in rebellion, there could not be any ground for his being ashamed of appearing in the measure of seizing their property: it was only the consciousness of their innocence that could make him afraid of undertaking what would bring upon him the execration of all ranks of people. In this perplexity, he desired Sir Elijah Impey would instruct Mr. Middleton to urge the Nabob to propose, as from himself, the seizure of the treasures. The unhappy Prince, without a will of his own, consented to make the proposal, as an alternative for the resumption of the jaghires, a measure to which he had the most unconquerable reluctance. Mr. Hastings, as it were to indulge the Nabob, agreed to the proposal, rejoicing at the same time that his scheme had proved so far successful, as that this proposal, coming from the Nabob, would, as he thought, free him (Mr. Hastings) from the odium of plundering the Princesses. But the artifice was too shallow, and their Lordships were now able to trace the measure to its source. They were now apprized, from the evidence, that Mr. Hastings had suggested it to Sir Elijah Impey, that he might suggest it to Mr. Middleton, that he might suggest it to the Nabob, that his Highness might suggest it to Mr. Hastings; and thus suggestion returned to the place from which it originally set out. One single passage from a letter, wrote by Mr. Middleton to Mr. Hastings, on the 2d of December, 1781, would make this point appear as clear as day. In this passage Mr. Middleton informed the Governor-General, “ That the Nabob, wishing to evade the measure of refusing the jaghires, had sent him a message to the following purport:—That if the measure proposed was intended to procure the payment of the balance due to the Company, he could better and more expeditiously effect that object, by taking from his mother the treasures of his father, which he asserted to be in her hands, and to which he claimed a right, founded in the laws of the Koran; and that it would be sufficient that he (Mr. Hastings) would hint his opinion upon it, without giving a formal sanction to the measure proposed. Mr. Middleton added, *“ The resumption of the jaghires it is*

“ necessary to suspend, till I have your answer to this letter.”

Upon this letter, Mr. Sheridan said, he had some observations to make. In the first place, it was clear, that though the Nabob had consented to make the desired proposal for seizing the treasures, it was only an *alternative*; for it entered into the Nabob's head both to seize the treasures, and resume the jaghires; the former measure he wished to substitute in the room of the latter, and by no means to couple them together; but Mr. Hastings was too nice a reasoner for the Prince— for he insisted that one measure should be carried into execution, because the Nabob had proposed it; and the other, because he himself determined upon it; and thus each party found his *alternative* adopted.

Another remark upon this letter was, that here the Nabob was still taught to plead his right to the treasures, as founded upon the laws of the Koran; but not a word was said about the *guarantee and treaty* that had barred or extinguished that right, whatever it might have been. But if all that Mr. Hastings would have the world believe was true, he had a much better claim, against which the treaty and guarantee could not be pleaded; and that was the *treason* of the Begums, by which they had forfeited all their property to the state, and every claim upon the English for protection. But upon this right by forfeiture, the Nabob was silent; he was a stranger to rebellion, and to the treason of his parents; and therefore was reduced to the necessity of reviving a claim under the laws of the Koran, which the treaty and guarantee had for ever barred.

The last observation with which he would trouble their Lordships, was upon the very remarkable expression contained in this letter—“ That it would be sufficient to hint his (Mr. Hastings) opinion upon it, without giving a formal sanction to the measure proposed.”—Why this caution? If the Begums had been guilty of treason, why should he be fearful of declaring to the world, that it was not the practice of the English to protect rebellious subjects, and prevent their injured sovereigns from proceeding against them according to law? That therefore he considered the treaty and guarantee, by which the Begums held their property, as no longer binding upon the English government, who consequently could have no further right to interfere between the Nabob and his rebellious parents, but ought to

to leave him at liberty to punish or forgive them as he should think fit. But, instead of holding this language, which manliness and conscious integrity would have dictated, had he been convinced of the guilt of the Begums, Mr. Hastings wished to derive all possible advantage from *active* measures against the Begums, and, at the same time, so far to save appearances, as that he might be thought to be *passive* in the affair.

Mr. Sheridan remarked, that in another passage of the same letter upon which he had just made these observations, Mr. Middleton informed the Governor-General, that he sent him at the same time a letter from the Nabob on the subject of seizing the treasures; but this letter had been suppressed. Mr. Sheridan called upon the Counsel for the prisoner to produce it, and then it would speak for itself; or to account satisfactorily to their Lordships for its not having been entered upon the Company's records. But this, he said, was not the only suppression of which he had reason to complain; the affidavit of Goulais Roy, who lived at Fyzabad, the residence of the Begums, and who was known to be their enemy, was suppressed. No person could be so well informed of their guilt, if they had been guilty, as Goulais Roy, who lived upon the spot where levies were said to have been made for Cheyt Sing, by order of the Begums. Therefore, if his testimony had not destroyed the idea of a rebellion on the part of the Begums, there was no doubt but it would have been carefully preserved. The information of Mr. Scott had also been suppressed. That gentleman had lived unmolested at Saunda, where Sumpshire Khan commanded for the Begums, and where he had carried on an extensive manufacture, without the least hindrance from this (supposed) disaffected Governor Sumpshire Khan.—Mr. Scott was at Saunda when Captain Gordon arrived there, and when it was said that the Governor pointed the guns of the fort upon Captain Gordon's party. If this circumstance had really happened, Mr. Scott must have heard of it, as he was himself at the time under the protection of those very guns. Why then was not the examination of this gentleman produced? He believed their Lordships were satisfied, that it had supported the allegations against Sumpshire Khan; it would not have been suppressed.

Mr. Sheridan said, it was not clear to him that service a tool as Mr. Middle-

ton was, Mr. Hastings had thought proper to entrust him with every part of his intentions throughout the business of the Begums; he certainly mistrusted, or pretended to mistrust him in his proceedings relative to the resumption of the Jaghirs. When it began to be rumoured abroad, that terms so favourable to the Nabob, as he obtained in the treaty of Chunar, by which Mr. Hastings consented to withdraw the temporary brigade, and to remove the English gentlemen from Oude, would never have been granted, if the Nabob had not bribed the parties concerned in the negotiation, to betray the interest of the Company. Soon as these rumours reached the ears of Mr. Hastings, he accused Mr. Middleton and his assistant Resident, Mr. Johnson, with having accepted bribes from the Nabob. They both joined in the most solemn assurances of their innocence, and called God to witness the truth of their declarations. Mr. Hastings, after this, appeared satisfied: possibly the consciousness that he had in his own pocket the only bribe which had been given on the occasion (the 100,000 l.) might have made him the less earnest in prosecuting any further enquiry into the business.

From a passage in a letter from Mr. Hastings, it was clear he did not think proper to commit to *writing* all the orders that he wished Mr. Middleton to execute; for there Mr. Hastings expressed his doubts of that person's "firmness" and activity, and, *above all*, of his "RECOLLECTION of his INSTRUCTIONS, and their importance;" and "said, that if he (Mr. Middleton) could not rely on his own power, and the means he possessed for performing those services, he would *free him from the charge*, and would proceed *himself* to Lucknow, and would *himself* undertake them."

Their Lordships must presume that the *instructions* alluded to must have been *verbal*; for had they been *written*, there was no danger of their having been forgot. Here Mr. Sheridan called upon the Counsel to state what those instructions were, which were of so much *importance*, which the Governor was greatly afraid Mr. Middleton would not recollect, and which, nevertheless, he did not dare to commit to writing, which would have been the most effectual way to prevent him from forgetting them.

To make their Lordships understand some other expressions in the above passage, Mr. Sheridan recalled to their memory,

mony, that it had appeared in the evidence, that Mr. Middleton had a strong objection to the resumption of the jaghires, which he thought a service of so much danger, that he removed Mrs. Middleton and her family when he was about to enter upon it; for he expected resistance not only from the Begums, but from the Nabob's own Aumeels, who knowing that the Nabob was a reluctant instrument in the hands of the English, thought they would please him by resisting a measure to which they knew he had given his authority *against his will*: in a word, Mr. Middleton expected that the whole country, as one man, would rise against him; and therefore it was that he suspended the execution of the order of resumption, until he should find whether the seizing of the treasures, proposed as an alternative, would be accepted as such. Mr. Hastings pressed him to execute the order for resuming the jaghires, and offered to go himself upon that service, if the other should decline it. Mr. Middleton, at last, having received a thundering letter from Mr. Hastings, by which he left him to act under "a dreadful responsibility," set out for Fyzabad. For all the cruelties and barbarities that were executed there, the Governor-General in his narrative said, he did not hold himself responsible, because he had commanded Mr. Middleton to be *personally* present during the whole of the transaction, until he should have completed the business of seizing the treasures, and resuming the jaghires.—But for what purpose had he ordered Mr. Middleton to be present? He would answer, by quoting the orders verbatim. — "You yourself must be *personally present*—you must not allow any negotiation or forbearance; but must prosecute both services until the Begums are at the entire mercy of the Nabob."—These peremptory orders, given under "a dreadful responsibility," were not issued for purposes of *humanity*, that the presence of the Resident might restrain the violence of the soldiers, but that Mr. Middleton should be a watch upon the Nabob, to steel his heart against the feelings of returning nature in his breast, and prevent the possibility of his relenting, or granting any terms to his mother and grandmother. This was the abominable purpose for which Mr. Hastings had commanded him to be present in person; and, on account of his presence for such an end, Mr. Hastings pleaded that he was not responsible

for what was done on that occasion at Fyzabad.

Here Mr. Sheridan *was taken ill*, and retired for a while, to try ~~if~~ in the fresh air he could recover, so as that he might conclude all he had to say upon the evidence on the second charge.—Mr. Adam, in the mean time, read some letters of Mr. Middleton.—Some time after, Mr. Fox informed their Lordships, that Mr. Sheridan was much better, but that he felt he was not sufficiently so, to be able to do justice to the subject he had in hand. The Managers therefore hoped their Lordships would be pleased to appoint a future day, on which Mr. Sheridan would finish his observations on the evidence.

Upon this their Lordships returned to their own House, and adjourned the Court to Friday.

THIRTY-FIFTH DAY.

FRIDAY, JUNE 13.

At twelve o'Clock, the Lord Chancellor and the mover of the present Charge appeared in their respective places, and both in a state of recovered health.

Mr. Sheridan began, by apologizing for the interruption which his indisposition had caused on the former day. He assured their Lordships, in the strongest terms, that nothing but the importance of the cause, to which he felt himself totally unable to do justice, could have made him trespass on that indulgence which on other occasions he had so amply experienced.

He had then concluded, with submitting to their Lordships the whole of the correspondence, as far as it could be obtained, between the principals and agents, in the nefarious plot carried on against the Nabob Vizier, and the Begums of Oude. These letters were worthy the most abstracted attention of their Lordships, as containing not only a narrative of that foul and unmanly conspiracy, but also a detail of the motives and ends for which it was formed, and an exposition of the trick, the quibble, the prevarication, and the untruth with which it was then acted, and now attempted to be defended!—The question would undoubtedly suggest itself, why the correspondence ever was produced by the parties against whom it was now adduced in evidence, and who had so much reason to distrust the propriety of their own conduct?—To this the answer was, that was owing to a mutual and *providential* resentment which had broken out be

tween the parties, which was generally the case between persons concerned in such transactions. Mr. Middleton was incensed, and felt as a galling triumph the confidence reposed by the Governor-General in other Agents.—Mr. Hastings was offended by the *tardy quarrels* which marked the conduct of Middleton; by the various remonstrances by the Agent—though as knowing the man to whom they were addressed, they were all grounded on motives of policy, not of humanity; and of expediency, which left justice entirely out of the question; but the great ostensible ground of quarrel was, that Middleton had dared to spend *two days* in negotiation—though that delay had prevented the general massacre of upwards of *two thousand persons*!—The real cause, however, of this difference was a firm belief on the part of Mr. Hastings, that Mr. Middleton had inverted their different situations, and kept the *lion's share* of plunder to himself. There were undoubtedly some circumstances to justify this suspicion. At the time when Mr. Hastings had first complained, the Nabob's Treasury was empty, and his troops so mutinous for their pay, as even to threaten his life; yet in this moment of *gratitude* and *opulence*, Middleton intimated the Nabob's desire to make Mr. Hastings a present of 100,000l. That sacrifice, however, not being deemed sufficient, Mr. Middleton was recalled, and Major Palmer was sent in his room, with instructions to tell the Nabob that such a donation was *not* to be attempted: the Prince, however, with an unfortunate want of recollection, said that “no such offer had ever been in his mind.”—Thus, it had always been considered as the heightening of a favor bestowed, that the receiver should not know from what quarter it came; but it was reserved for Mr. Middleton to improve on this by such a *delicate refinement*, that the person giving should be totally ignorant of the favor he conferred!

But notwithstanding these little differences and suspicions, Mr. Hastings and Mr. Middleton, on the return of the latter to Calcutta in October 1782, continued to live in the same style of *friendly collusion*, and *fraudulent familiarity* as ever. But when Mr. Britton, not answering the purposes of Mr. Hastings, was accused on the *suborned* letters procured from the Nabob, one of which pronounced him the blackest character in existence, while another, of the same date,

spoke of him as a very honest fellow; Mr. Hastings thought it might appear particular; and therefore, after their intimacy of six months, accuses Mr. Middleton also before the Board at Calcutta. It was then that in the rash eagerness which distinguished his pursuit of every object, Mr. Hastings had incautiously, but happily for the present purposes of justice, brought forth these secret letters. It mattered not what were the vice which induced Mr. Hastings to bring that charge; whether he had drawn up the accusation, or obliged Middleton with his aid in framing a *defense*; the whole ended in a reprieve, and a poetical quotation from the Governor-General. The only circumstance material to the purposes of humanity, was the production of instruments, by which those who had violated every principle of justice and benevolence, were to see their guilt explained, and, it was to be hoped, to experience that punishment which they deserved.

To those *private* letters it was that their Lordships were to look for whatever elucidation of the subject could be drawn from the parties concerned: written in the moments of confidence, they declared the real motive and object of each measure; the *public* letters were only to be regarded as proofs of guilt, whenever they established a contradiction. The Counsel for the Prisoner had chosen, as the safest ground, to rely on the public letters, written for the concealment of fraud and purpose of deception. They had, for instance, particularly dwelt on a public letter from Mr. Middleton, dated in December 1781, which intimated some particulars of supposed contumacy in the Begums, with a view to countenance the transactions which shortly after took place, and particularly the resumption of the Jaghires. But this letter both Sir Elijah Impey and Mr. Middleton had admitted, in their examination at that bar, to be totally false; though if it were in every point true, the apprehension of resistance to a measure could not by any means be made a ground for the enforcement of that measure in the first instance. The Counsel seemed displeased with Mr. Middleton for the answer, and therefore repeated the question. The witness, however, did not readily fall into their humour; for he declared, that he did not recollect a particle of the letter; and though *memory* was undoubtedly not the *forte* of Mr. Middleton, he was not, perhaps,

may, entirely faulty on this occasion, as the letter was certainly of a *later fabrication*, and perhaps not from his hand. This letter, however, was also in direct contradiction to every one of the Defences set up by Mr. Hastings.—Another public letter, which had been equally dwelt on, spoke of the “determination of the Nabob” to resume the Jaghires. It had appeared in evidence, that the Nabob could by no means be compelled to yield to their measures—that it was not until Mr. Middleton had actually issued his own *Perwannahs* for the Collection of the Rents, that the Nabob, rather than be brought to the utmost state of degradation, agreed to let the measure be brought forward on his own act! The resistance of the Begums to that measure was noticed in the same letter, as an instance of *female levity*—as if their defence of the property assigned for their subsistence was to be made a reproach;—or that they deserved a reproof for *female lightness*, by entertaining a *feminine* objection—to their being *served*!

This resistance to the measure, which was expected, and the consoling slaughter on which Mr. Hastings relied, were looked to in all those letters as a justification of the measure itself. There was not the smallest mention of the *anterior* rebellion, which by prudent *after-thought* had been so greatly magnified. There was not a syllable of those dangerous machinations which were to have destroyed the Nabob;—of those sanguinary artifices by which the English were to have been extirpated.—Not a particle concerning those practices was mentioned in any of Middleton’s letters to Hastings, or in the still more confidential communication which he maintained with Sir Elijah Impey; though after the latter his letters were continually posting, even when the Chief Justice was travelling round the country in search of affidavits. When on the 28th of November, he was busied at Lucknow on that honourable business, and when three days after he was found at Chunar, at the distance of 200 miles, prompting his instruments, and like Hamlet’s Ghost exclaiming—“SWEAR!”—his progress on that occasion was so whimsically sudden, when contrasted with the gravity of his employ, that an observer would be tempted to quote again from the same scene,—“Ha! Old Truepenny, canst thou mole so fast i’ the ground?”—Here however the comparison ceased—Sir

when Sir Elijah made his visit to now, “to what the abrupt bluntness” of the Nabob, his language wholly different from that—the—it would have been much contrary purpose to have said, Mr.

“Taint not thy mind, no.—7
contrive

“Against thy MOTHER aug . .

On the subject of those Affidavits would only make another tangle. —Sir Elijah Impey had denied acquaintance with their contents, though he had been actually accompanied by Major Davy, who there stated them from the Persian, for the use of Mr. Hastings!—There was among them, an Affidavit taken in England from a Native at Buxar, but which first explained to the deponent by Major Davy in the presence of Sir Elijah Impey.—How far therefore the assertion of Chief Justice was plausible, and how this fact was consistent with that assertion, he should leave it to their Lord to determine.

It was in some degree observable that not one of the private letters of Hastings had been produced at any time.—Even Middleton, when all confidence was broken between them, by the production of his private correspondence at Calcutta, either feeling for his own safety, or sunk under the fascinating influence of his master, did not dare attempt a retaliation!—The letters of Middleton, however, were sufficient to prove the situation of the Nabob, when pressed to the measure of resuming the Jaghires, which he had been represented as acting wholly from himself.—He was there described as lost in sullen melancholy—with feelings agitated beyond expression, and with every mark of agonized sensibility. To such a degree was this apparent, that even Middleton was moved to interfere for a temporary respite, in which he might be more reconciled to the measure. “I am fully of opinion,” said he, “that the despair of the Nabob must impel him to violence; I know also that the violence must be fatal to himself;—but yet I think, that with his present feelings, he will disregard all consequences.”—Mr. Johnson also, the Assistant Resident, wrote at the same time to Mr. Hastings to aver to him that the measure was dangerous, that it would require a total Reform of the Collection, which could not be made without a Campaign.—This was *British* Justice! this was Justice.

Humanity! Mr. Hastings ensures to Allies of the Company in the strongest of their Prosperity and his Protection—the former he secures by sending them to plunder them of their wealth and to waste their soil!—his protection offers them a similar security; and what of a Vulture to a Lamb—grinding in its Vitals!—thirsting for Blood!—scaring off each Petty Kite that hovers round—and then, with an insulting perversion of terms, calling sacrifice, Protection!

An object for which History searches for any similarity in vain.—The deep-searching Annals of Tacitus—the luminous Philosophy of Gibbon—all the Records of Man's Enormity, from Original to this period in which we pronounce to windle into comparative insignificance enormity—both in aggravations of the Principles, and extent of their Consequential Ruin!—The victims of this oppression were confessedly destitute of power to resist their oppressors; but the debility, which from other poisons would have claimed some compassion, with respect to the mode of suffering, here excited but the ingenuity of Torture! Even when every feeling of the Nabob was subdued, nature made a ingering, feeble stand within his bosom; but even then that cold unfeeling spirit of malignity, with whom his doom was fixed, returned with double acrimony to its purpose, and compelled him to inflict in a parent that destruction, of which he was himself reserved but to be the last victim!

Yet when cruelty seemed to have reached its bounds, and guilt to have ascended to its climax, there was something in the character of Mr. Hastings, which seemed to transcend the latter, and overleap the former;—and of this kind was the letter to the Nabob, which was dispatched on this occasion. To rebuke Mr. Middleton for his moderation, as was instantly done, was easily performed through the medium of a public and a private letter.—But to write to the Nabob in such a manner that the command might be conveyed, and yet the letter afterwards shewn to the world, was a task of more difficulty; but which it appeared by the event was admirably suited to the genius of Mr. Hastings. His letter was dated the fifteenth of February 1782, though the Jaghires had been then actually seized—and it was in proof that it had been sent at a much earlier period, he there assured the Nabob of his coin-

cidence with his wishes respecting the resumption of the Jaghires—he declares that if he found any difficulty in the measure—he, Mr. Hastings, would go to his assistance in person, and lend his aid to punish those who opposed it—"for that nothing could be more ardent than his friendship, or more eager than his zeal for his welfare." The most desperate intention was clothed in the mildest language.—But the Nabob knew by sad experience the character with whom he had to deal, and therefore was not to be deceived; he saw the Dagger glistening in the hand which was treacherously extended, as if to his assistance—and from that moment the last faint Ray of Nature expired in his bosom. Mr. Middleton from that time extended his Iron Sceptre without resistance—the Jaghires were seized, every measure was carried, and the Nabob, his Feelings wounded, and his Dignity degraded, was no longer considered as an object of regard.—Though these were circumstances exasperating to the human heart which felt the smallest remains of sensibility, yet it was necessary, in idea, to review the whole from the time that this treachery was first conceived, to that when by a series of artifices the most execrable, it was brought to a completion. Mr Hastings would there be seen standing aloof indeed, but not inactive in the war! He would be discovered reviewing his agents, rebuking at one time the pale conscience of Mr. Middleton, and at another relying on the stouter villainy of Hyder Beg Cawn. With all the calmness of veteran delinquency, his eye ranged through the busy prospect, piercing through the darkness of subordinate guilt, and arranging with congenial adroitness the agents of his Crimes and the instruments of his Cruelty.

The feelings of the several parties at the time would be most properly judged of by their respective correspondence. When the Bow Begum, despairing of redress from the Nabob, addressed herself to Mr. Middleton, and reminded him of the guarantee which he had signed, she was instantly promised that the amount of her Jaghire should be made good, though Mr. Middleton said he could not interfere with the sovereign decision of the Nabob respecting the lands. The deluded and unfortunate woman "thanked God that Mr. Middleton was at hand for her relief," at the very instant when he was directing every effort to her destruction;—when he had actually written

the orders which were to take the collection out of the hands of her agents! Even when the Begum was undeceived—when she found that British faith was no protection, when she found that she should leave the country, and prayed to the God of nations not to grant his peace to those who remained behind;—there was still no charge of *rebellion*, no re- crimination made to all her reproaches for the broken faith of the English. Even when *lung* to madness, she asked “how long would be their reign,” no mention of her disaffection was brought forward; the stress was therefore idle, which the Counsel for the prisoner strove to lay on these expressions of an injured and enraged woman.—When at last irritated beyond bearing, she denounced Infamy on the heads of her Oppressors, who was there who would not say that she spoke in a *prophetic* spirit, and that what she had then predicted had not even to its last letter been accomplished! But did Mr. Middleton even to this violence retort any particle of accusation? No; he sent a *jocose* reply, stating that he had received such a letter under her seal, but that from its contents he could not suspect it to come from her, and begging therefore that she might endeavour to detect the *forgery*!—Thus did he add to foul injuries, the vile aggravation of a *brutal jest*;—like the Tiger that prowls over the Scene where his Ravages were committed, he shewed the savageness of his Nature, by grinning over his Prey, and fawning over the last Agonies of his unfortunate Victim.

Those letters were then enclosed to the Nabob, who no more than the rest made any attempt to justify himself by imputing any criminality to the Begums. He only sighed a hope, that his conduct to his parents had drawn no shame upon his head; and declared his intention to punish—not any disaffection in the Begum—but some officious servants who had dared to foment the misunderstanding between them and the Nabob.—A letter was finally sent to Mr. Hastings, about six days before the seizure of the treasure from the Begums, declaring their innocence, and referring the Governor-General to Captain Gordon, whose life they had protected, and whose safety should have been their justification. That enquiry was never made; it was looked on as unnecessary—because the conviction of their innocence was too deeply impressed!

The Counsel in recommending an attention to the public in preference to the private letters, had remarked in particular, that one letter should not be taken as evidence, because it was evidently and abstractedly private, as it contained in one part the anxieties of Mr. Middleton for the illness of his son.—This was a singular argument indeed. The circumstance undoubtedly merited strict observation, though not in the view in which it was placed by the Counsel.—It went to shew that some at least of those concerned in these transactions, felt the force of those ties, which their efforts were directed to tear asunder—that those who could ridicule the respective attachment of a mother and a son—who would prohibit the reverence of the son to the mother who had given him life—who could deny to *maternal debility* the protection which *filial tenderness* should afford—were yet sensible of the *strainings* of those *chords* by which they were connected.—There was something in the present business—with all that was horrible to create *aversion*—so vilely loathsome, as to excite *disgust*.—If it were not a part of his duty, it would be superfluous to speak of the sacredness of the ties which those aliens to feeling—those apostates to humanity had thus divided.—In such an assembly, said Mr. Sheridan, as that before which I speak, there is not an eye but must look reproach to this conduct—not a heart but must anticipate its condemnation.—“**FILIAL PIETY!** It is the primal bond of Society—It is that instinctive principle which, panting for its proper good—soothes, unbidden, each sense and sensibility of man!—It now quivers on every lip!—it now beams from every eye!—It is that gratitude, which softening under the sense of recollected good—is eager to own the vast countless debt it ne’er, alas! can pay—for so many long years of unceasing solicitude, honourable self-denials, life-preserving cares!—It is that part of our practice, where duty drops its awe—where reverence refines into love.—It asks no aid of memory!—It needs not the deductions of reason!—Pre-existing, paramount over all, whether law or human rule—few arguments can increase or diminish it!—It is the sacrament of our nature—not only a duty, but the indulgence of man—is his first great privilege.—It is

"amongst his last most endearing delights! when the bosom glows with the idea of reverberated love—when to requite on the visitations of nature, and return the blessings that have been received! when—what was emotion fixed into vital principle—what was instinct habituated into a master-passion—sways all the sweetest energies of man—hangs over each vicissitude of that must pass away—aid the melancholy virtues in their last sad tasks of life—to cheer the languors of decrepitude and age—explode the thought—explain the aching eye!"

The Jaghires being seized, Mr. Sheridan proceeded to observe, the Begums were left without the smallest share of that pecuniary compensation promised by Mr. Middleton; and as when tyranny and injustice take the field, they are always attended by their *camp-followers*, flattery pilfering, and petty insult—to in his instance, the goods taken from them were sold at a mock sale at inferior value. Even gold and jewels, to use the language of the Begums, instantly lost their value when it was known that they came from them! Their ministers were therefore imprisoned to extort the deficiency which this fraud had occasioned; and those mean arts were employed to justify a continuance of cruelty. Yet these again were little to the frauds of Mr. Hastings. After extorting upwards

600,000*l.* he forbade Mr. Middleton to come to a *conclusive settlement*—He knew that the *treasons* of our allies in India had their origin solely in the wants of the Company. He could not therefore say that the Begums were entirely innocent, until he had consulted the general *Record of Crimes!*—the *Cash Account* at Calcutta!—And this *prudence* of Mr. Hastings was fully justified by the event—for there was actually found a balance of *twenty-six lacks* more against the Begums, which 260,000*l.* worth of treason had never been dreamed before.

"Talk not to us," said the Governor-General, "of their Guilt or innocence, but as it suits the Company's *edit!* We will not try them by the Code of Justinian, nor the Institutes

Timur—We will not judge them either the British laws, or their local customs! No! We will try them by the *Multiplication Table*, we will find them guilty by the *Rule of Three*, and we will condemn them according to the sapient

and profound Institutes of—COCKER'S *Arithmetic!*"

Proceeding next to state the distresses of the Begums in the Zenana, and of the women in the Khord Mahal, Mr. Sheridan remarked, that some observation was due to the remark made by Mr. Hastings in his Defence, where he declared—"that whatever were the distresses there, and whoever was the agent, the measure was in his opinion reconcilable to justice, honour, and sound policy." Major Scott—the *incomparable agent* of Mr. Hastings, had declared this passage to have been written by Mr. Hastings with his own hand.—Mr. Middleton, it appeared, had also avowed his share in those humane transactions, and blushing retired. Mr. Hastings then cheered his drooping spirits.—"Whatever part of the load," said he, "yours cannot bear, my *unburdened* character shall assume. I will crown your labours with my ineffable approbation—Thus *twain-warriors* ye shall go forth! do you find *merit*, and I'll find *character*—and assuage, repulse, and contumely shall all be set at defiance!"

If I could not prove, continued Mr. Sheridan, that those acts of Mr. Middleton were in reality the acts of Mr. Hastings, I should not trouble your Lordships by combating these assertions; but as that part of his criminality can be incontestably ascertained—I shall undoubtedly appeal to the assembled legislators of this realm, and call on them to say, whether those acts were justifiable on the score of *policy*; I shall appeal to all the august presidents in the courts of British justice, and to all the learned ornaments of the profession, to decide whether these actions were reconcilable to *justice*.—I shall appeal to a reverend assemblage of prelates feeling for the general interests of humanity, and for the honour of the religion to which they belong: Let them determine in their own minds, whether those acts of Mr. Hastings and Mr. Middleton were such as a *Christian* ought to perform, or a *man* to avow!

He then proceeded to relate the circumstances of the imprisonment of Bahad Ally Cawn and Jewar Ally Cawn, the ministers of the Nabob, on the grounds above stated: with them was confined that *arch-rebel* Sumphshire Cawn, by whom every act of hostility that had taken place against the English, was stated to have been committed.—No enquiry

quiry, however, was made concerning his *treason*, though many had been held respecting the *treasure* of the others. He was not so far noticed as to be deprived of his *food* *; nor was he even complimented with *fetters*! and yet when he is on a future day to be informed of the mischiefs he was now stated to have done, he must think that on being forgotten, he had a very *providential escape*!—The others were, on the contrary, taken from their milder prison at Fyzabad; and when threats would effect nothing, transferred by the meek humanity of Mr. Middleton to the fortrefs of Chunargur. There, where the British flag was flying, they were doomed to deeper dungeons, heavier chains, and severer punishments. There where that flag was displayed which was wont to cheer the depressed and to dilate the subdued heart of misery—their venerable, but unfortunate men were fated to encounter something *lower* than PERDITION, and something *blacker* than DESPAIR! It appeared from the evidence of Mr. Holt and others, that they were both cruelly flogged, though one was above seventy years of age, to extort a confession of the buried wealth of the Begums!—Being charged with disaffection, they proclaimed their innocence.—“Tell us where are the remaining treasures, (was the reply)—it is only a treachery to your immediate sovereigns:—and you will then be fit af-

“sociates for the representatives of British faith and British justice in India!”
 —“Oh! FAITH, Oh JUSTICE!” exclaimed Mr. Sheridan, “I conjure you by your sacred names to depart for a moment from this place, though it be your peculiar residence; nor hear your names profaned by such a sacrilegious combination, as that which I am now compelled to repeat! where all the fair forms of nature and art, truth and peace, policy and honour, shrunk back aghast from the deleterious shade!—where all existences, nefarious and vile, had sway—where amidst the black agents on one side, and Middleton with Impey on the other, the toughest bend, the most unfeeling shrink!—the great figure of the piece—characteristic in his place! aloof and independent, from the puny profligacy in his train!—but far from idle and inactive, turning a malignant eye on all mischief that awaits him!—the multiplied apparatus of temporising expedients, and intimidating instruments!—now cringing on his prey, and fawning on his vengeance!—now quickening the limpid pace of craft, and forcing every stand that retreating nature can make in the heat!—the attachments and the decorums of life!—each emotion of tenderness and honour!—and all the distinctions of national characteristics!—with a long catalogue of crimes and

* The following note from Mr. Middleton to Lieutenant Francis Rudedge, dated January 20, 1782, had been read in evidence:

“SIR,
 “When this note is delivered to you by Hoolas Roy, I have to desire, that you order the two prisoners to be put in *iron*, keeping them from all food, &c. agreeable to my instructions of yesterday.
 (signed)

NATH. MIDDLETON.”

Mr. Middleton had indeed refused to acknowledge that he wrote this note, alleging that as he had been accused by Mr. Hastings for his conduct at Fyzabad, he begged he might not be forced to answer questions that would criminate himself. But what was the nature of the accusation brought against Mr. Middleton by Mr. Hastings? Was it, that he used harsh methods to get possession of the treasures? No—the charge was, that he had shown too much forbearance; and Mr. Middleton’s answer to Mr. Hastings’s charge, was of a nature which proved that it was not of too great severity that the Governor-General had accused him.—“It could not, I flatter myself,” said Mr. Middleton, “be termed a long or unwarrantable delay (two days).—The Nabab was *son* to the Begum whom we were to proceed against—A *son* against a *mother* must at least *show appearances* in his mode of proceeding. In the East it is well known that no man, either by himself or his troops can enter the walls of a Zenana, scarcely in the case of acting against an open enemy much less of an ally—an ally acting against his own mother. The outer walls, and the Begums’ agents, were all that were liable to immediate attack; they were dealt with and successfully, as the event proved—No further rigour than what I have exerted could be used against females in this country.—WHERE FORCE COULD BE EMPLOYED, IT WAS NOT SPARED.”

This defence clearly shewed, that Mr. Hastings had accused Mr. Middleton, not of having used *too much severity*, but of *not having used enough*.

gravations, beyond the reach of thought for human malignity to persecrate, or human vengeance to punish—**LOWER than PERDITION—BLACKER than DESPAIR!**

It might have been hoped, for the honour of the human heart, that the Begums had been themselves exempted from a share in these sufferings, and that they had been wounded only through the sides of their Ministers. — The reverse of this, however, was the fact. — Their Palace was surrounded by a guard, which was withdrawn by Major Gulpin, to avoid the growing resentments of the people, and replaced by Mr. Middleton, through his fears from that “dreadful responsibility” which was imposed on him by Mr. Hastings. — The women of the Khord Mahal, who had not been involved in the Begums supposed crimes; who had raised no *sub-rebellion* of their own; and who, it had been proved, lived in a distinct dwelling, were causelessly involved in the same punishment; their Residence surrounded with guards, they were driven to despatch by famine, and when they poured forth in sad procession, were driven back by the soldiery, and beaten with *bludgeons* to the scene of Madness which they had quitted. These were acts, Mr. Sheridan observed, which, when told, needed no comment; he should not offer a single syllable to awaken their Lordships feelings; but leave it to the facts which had been proved, to make their own impressions.

The argument now revolved solely to this point, whether Mr. Hastings was to be answerable for the crimes committed by his agents? It had been fully proved that Mr. Middleton had signed the treaty with the superior Begum in October 1778. He had acknowledged signing some others of other dates, but could not *recollect* his authority. These treaties had been fully recognized by Mr. Hastings, as was fully proved by the evidence of Mr. Purling, in the year 1780. In that of October 1778, the Jaghires were secured, which was allotted for the support of the women in the Khord Mahal: on the first idea of returning those Jaghires a provision should have been secured to those unfortunate women, and in this respect Mr. Hastings was clearly guilty of a crime, by his omission of making such provision. But all he pleaded, that he was not accountable for the Cruelties which had been executed. This was the Plea which Tyranny aided by its Prime Minister, Treachery, was always sure to set up. Mr. Middleton had attempted to strengthen

this plea, by endeavouring to claim the whole Infamy of those transactions, and to *monopolize* the Guilt! He dared even to aver that he had been condemned by Mr. Hastings for the ignominious part he had acted; — he dared to avow this, because Mr. Hastings was on his Trial, and he thought he should never be tried; — but in the face of the Court, and before he left the Bar, he was compelled to confess that it was for the *lenience* not the *severity* of his proceedings that he had been reproved by Mr. Hastings.

It would not, he trusted, be argued, that because Mr. Hastings had not marked every passing shade of guilt, and because he had only given the bold outline of cruelty, that he was therefore to be acquitted. — It was laid down by the law of England — that law which was the perfection of Reason — that a Person ordering an Act to be done by his Agent, was answerable for that act with all its consequences. Middleton had been appointed in 1777, the avowed and private Agent, — the *secunda-si* of Mr. Hastings. The Governor-General had ordered the measure: Middleton declared that it could not have been effected, by milder means. Even if he never saw, nor heard afterwards of the consequences of the measure, he was answerable for every pang that was inflicted, and for all the blood that was shed. But he had heard, and that instantly, of the whole. He had written to arraign Middleton of forbearance and of neglect! — He commanded them to work upon their hopes and fears, and to leave no means untried, until — to speak their own language, but which would be better suited to the *Banditti of a Tavern* — “they obtained possession of the secret hoards of the old Ladies.” — He would not allow even of a delay of two days to smoothe the compelled approaches of a Son to his Mother, on such an occasion! — His orders were peremptory; — and if a massacre did not take place, it was the merit of accident — and not of Mr. Hastings. After this would it be said, that the prisoner was ignorant of the acts, or not culpable for their consequences? It was true, he had not enjoined in so many words the *guards*, the *famine*, and the *bludgeons*; he had not weighed the *sisters*, nor numbered the *lashes* to be inflicted on his victims. But yet he was equally guilty as if he had borne an active and personal share in each transaction. It was, as if he had commanded that the *heart* should be torn from the bosom, and yet had enjoined that no *blood* should fol-

low. He was in the same degree accountable to the *Laws*, to his *Country*, to his *Conscience*, and to his *God*!

Mr. Hastings had endeavoured also to get rid of a part of his Guilt, by observing that he was but *one* of the Supreme Council, and that all the rest had sanctioned those transactions with their approbation. If Mr. Hastings could prove, however, that others participated in the Guilt, it would not tend to diminish his own Criminality. But the fact was, that the Council had in nothing erred so much as in a criminal Credulity given to the declarations of the Governor-General. They knew not a word of those transactions until they were finally concluded. It was not until the January following, that they saw the mass of Falshood which had been published under the title of "Mr. Hastings' Narrative." They had been then unaccountably duped into the suffering a Letter to pass, dated the 29th of November, intended to deceive the Directors into a belief, that they had received intelligence at that time, which was not the fact. These observations, Mr. Sheridan said, were not meant to cast any obloquy on the Council;—they had undoubtedly been decieved, and the deceit practised on them by making them sign the Narrative, was of itself a strong accusation of Mr. Hastings, and a decided proof of his own Consciousness of Guilt. When tired of corporal Infliction, his Tyranny was gratified by insulting the understanding. Other Tyrants, though born to greatness, such as a Nero or a Caligula, might have been roused, it had been supposed, by reflection, and awakened into contrition;—but here was an instance which spurned at theory, and baffled supposition: A man born to a state at least of equality;—inured to calculation, and brought up in habits of reflection;—and yet proving in the end that Monster in Nature, a *deliberate and reasoning Tyrant*!

The Board of Directors received those advices which Mr. Hastings thought proper to transmit; but though unfurnished with any other materials to form their judgment, they expressed very strongly their doubts, and as properly ordered an enquiry into the circumstances of the alleged Disaffection of the Begums; pronouncing it at the same time a Debt which was due to the Honor and Justice of the British Nation. This enquiry, however, on the direction's reaching India, Mr. Hastings thought it absolutely necessary

PART I.

to elude. He stated to the Council, that it being merely stated, that "if on enquiry certain facts appeared," no enquiry was thereby directly enjoined!—"It would revive (said he) those animosities that subsisted between the Begums and the Vizier, which had then subsided.—If the former were inclined to appeal to a foreign jurisdiction, they were the best judges of their own feeling, and should be left to make their own complaint." All this, however, was nothing to the magnificent paragraph which concluded this Minute, and to which Mr. Sheridan also requested the attention of the Court. "Beside, (said Mr. Hastings) I hope it will not be a departure from official language to say—"that the MAJESTY of JUSTICE ought not to be approached without solicitation: she ought not to descend to inflame or provoke, but to withhold her judgment, until she is called on to determine!" What is still more astonishing was, that Sir John Macpherson, (who, though a Gentleman of Sense and Honor, he stated to be rather Oriental in his imagination, and not learned in the Sublime and Beautiful from the Immortal Leader of this Prosecution, and who had before opposed Mr. Hastings) was caught by this *bold bombastic quibble*, and joined in the same words, "that the MAJESTY of JUSTICE ought not to be approached without solicitation."

"But JUSTICE is not this halt and miserable object! (continued Mr. Sheridan) It is not the ineffective Bauble of an Indian Pagod!—It is not the portentous Phantom of Despair!—It is not like any fabled Monster, formed in the Eclipse of Reason, and found in some unhallowed Grove of Superstitious Darkeness, and Political Dismay! No, my Lords!

"In the happy reverse of all this, I turn from this disgusting Caricature to the REAL IMAGE!—JUSTICE I have now before me AUGUST and PURE! the abstract idea of all that would be perfect in the spirits and the aspirings of Men! where the Mind rises, where the Heart expands:—where the Countenance is ever placid and benign:—where her favourite attitude is to stoop to the Unfortunate:—to hear their cry and to help them:—to rescue and relieve, to succour and save:—Majestic, from its Mercy:—Venerable, from its Utility:—Uplifted without Pride:—Firm, without Ob-

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"duracy."

"Gaiety:—Beneficent in each Pre-
 "ference:—Lovely, though in her
 "Frown!
 "ON THAT JUSTICE I RELY:—
 "Deliberate and sure, abstracted from all
 "Party Purpose and Political Specula-
 "tion!—not on Words, but on Facts!
 "—You, my Lords, who hear me, I
 "conjure, by those RIGHTS it is your best
 "privilege to preserve—by that FAME
 "it is your best pleasure to inherit—by
 "all those FEELINGS which refer to
 "the first room in the series of existence,
 "the ORIGINAL COMPACT of our Na-
 "ture—our CONTROLLING RANK in
 "the Creation—This is the call on all,

"To administer to Truth and Equity, as
 "they would satisfy the Laws and satis-
 "fy themselves—with the most exalted
 "Bliss, possible or conceivable for our
 "Nature:—The SELF-APPROVING
 "CONSCIOUSNESS OF VIRTUE, when
 "the Condemnation we look for will be
 "one of the most ample Mercies accom-
 "plished for Mankind since the Crea-
 "tion of the World!"

MY LORDS, I HAVE DONE!

The Court immediately rose, and ad-
 journed to the *first* TUESDAY in the
 next Session of Parliament.

END OF THE FIRST PART.

THE T R I A L OF WARREN HASTINGS, Esq. &c.

P A R T II.

ON the 10th of NOVEMBER, 1788, the HOUSES OF LORDS and COMMONS met, in consequence of the last commission for the prorogation of Parliament having expired; but were under the necessity of postponing the business of Mr. Hastings's TRIAL, from a severe indisposition with which his Majesty was then afflicted, and which prevented the opening of the Session in the usual regular manner till March 10, 1789, when a commission having issued under the Great Seal, appointing certain Commissioners to hold the Parliament, the Lord Chancellor opened the business of the same with a Message from His Majesty. On Feb. 14, an order had been previously made by the House of Lords for resuming the Trial on the 6th of April; this, however, was afterwards discharged on March 25; and on March 30, another Message was sent to the Commons, intimating that they would proceed on the Trial of Warren Hastings, Esq. on April 21. Accordingly,

THIRTY-SIXTH DAY,
TUESDAY, APRIL 21,

The proceedings in this Trial were resumed. At twelve o'clock the Peers in their robes took their seats in the Court, and ordered the Serjeant at Arms to summon Mr. Hastings to appear. That gentleman was soon brought to the bar by the Usher of the Black Rod, and the Serjeant at Arms having, by order of their Lordships, called upon the Commons to proceed in support of the Charges brought by them against the prisoner,

Mr. Burke, chief Manager of the Prosecution, immediately rose, and addressed the Court.

The melancholy event, he said, of his Majesty's illness, which had so deeply affected the nation, and suspended the functions of government, had occasioned a delay in the prosecution

of the impeachment, which was to be regretted not only on account of the melancholy cause that had produced it, but also of public justice, the cause of which, at least in the present case, had been unavoidably checked for a considerable time.

The cause of the delay was now happily removed, and their Lordships were again enabled to proceed in the important trial, which had already taken up much of their attention.

He trusted, that in the tumult of joy occasioned by his Majesty's recovery, which now filled the breasts of all his subjects with exultation equal to the depression which they felt whilst his Majesty was afflicted with sickness—he trusted, he said, that in this tumult of joy, their Lordships would not forget that *justice* was due of *right* to the injured, and that they could not voluntarily suspend it without a breach of their public duty.

He said, he was just come from a place (the House of Commons) where regulations had been made for seconding his Majesty's wishes, in giving solemnity to the public thanksgiving that was to take place on Thursday, and paying due homage to the Almighty for his happy recovery.

But it was not by *prayer* alone that becoming homage was to be paid to Heaven. *Courts of Justice* were links of that great chain, of which the first and great link was DIVINE JUSTICE: this was an attribute essential to the Deity; and man, by endeavouring to approach as nearly as the nature of man would admit, to a resemblance to his Maker, might be assured, that in exercising representative justice, he was performing a service and an homage not less acceptable to Heaven, than the most fervent prayer.

Having premised this, he said, there
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were some difficulties, under which the impeachment had of late begun to labour, which he would endeavour, with their Lordships' leave, to remove.

Some persons, no doubt less friends to public justice than to Mr. Hastings, had of late begun to ask, *when* this trial would terminate? To their question he would give this short answer—“As soon as the ends are attained for which it was instituted.”

It would be strange indeed, if, because a prisoner had contrived to render it difficult for his prosecutors to discover all the mazes of his corruption and crimes; if, because he was watchful to seize every opportunity that might occasion delay or trouble, and was ready to improve it, that his prosecutors should abandon the duty they owed to the public and to their country, and suffer a criminal to escape punishment, merely because it was likely to be a work of labour and of time to prosecute him to conviction. If a prisoner was watchful, active, laborious and persevering, it would be shameful for those to whom the care of bringing him to justice was committed, to be wanting in vigilance, activity, labour and perseverance.

If the length of time that a trial was likely to last was a reason for putting an end to it, it was equally a reason for not beginning it. But as both Houses of Parliament had entered upon this trial, which they knew beforehand must, from its nature, run to great length, he made no doubt but they would feel it to be a duty, both to the nation and to the prisoner, not to drop it, but to carry it on until it should terminate, where alone it ought to end, in the acquittal or condemnation of the party accused.

He was well aware, he said, that their Lordships must find it a work of labour and fatigue to sit out so long a trial; but he would say, at the same time, that the COMMONS would not call upon their Lordships to undertake any thing of which they were not ready to let them an example. The COLCHESTER Committee had been kept sitting within a day or two of the time which their Lordships had hitherto devoted to this trial. And yet the Committee had to enquire into little more than paltry acts of *bribery*, amounting only to *odd pounds, shillings, and pence*, and into the conduct of a Returning Officer, who was no more than

a MILLER. But their Lordships had before them a Governor General of Bengal, who was charged with enormous crimes, and with having taken bribes, and plundered the defenceless people of his government of sums amounting to MILLIONS.

But the *length* of the trial was not the only objection that he heard against it; he had been informed that the prisoner had complained to their Lordships of the great expence to which it exposed him, and threatened him with the total ruin of his fortune, as his defence had, even in this early stage of it, cost him already near 30,000*l*. This was certainly a very large sum; and it was by no means his wish to exhaust any man's fortune merely by his defence. How so great a sum could have been possibly expended by him already, he could not comprehend; but *this* he would venture to say, that the fortune of Mr. Hastings was not likely to be exhausted by the expence to which he was subjected by his defence. The immense bribes he had received whilst he was in office had so swelled his fortune, that he might consider the loss of 30,000*l*. as a trifle. He had received from one single Zemindar, at one time, a bribe to that amount. And therefore, as their Lordships would find, that the immense fortune of the prisoner had been acquired by *peculation*, they would not think it very hard that wealth so acquired, should be diminished; nor would they feel any compassion for the losses of a person, who was obliged to take from the stores which *extortion* and *oppression* had enabled him to accumulate.

Having made these preliminary observations, Mr. Burke said, he hoped, that notwithstanding all the difficulties which had been thrown in the way of the trial, it was now going to be resumed, under auspices as favourable as those under which it had begun.

He then informed their Lordships, that the charge which he intended to open, was the seventh, which related to *PRESENTS*, or in plain English, *BRISES*.

But before he opened the charge, he begged leave to make some few remarks upon something that had happened since the last time he had had the honour of addressing their Lordships. Packets had been brought over from India, containing accusations from persons, from whom Mr. Hastings

tings was charged with having taken or extorted money, the purport of which attestations was to exculpate the accused, and to declare that with respect to them, he had not acted rigorously or unjustly, or spoiled them of any part of their property, but had behaved to them with kindness, moderation and justice.

At first sight the Commons, he said, might appear in an awkward light, by being thus *disfavour'd* by those very persons, on account of whose *offerings* and *worships* occasioned by the prisoner, they had brought him to their Lordships' bar to answer for his administration. It was odd that the parties in whose behalf the prosecution had been commenced, should come forward and declare that they had received no injuries from Mr. Hastings, that he had done them no wrongs.

But so far were the Managers for the Commons from being disconcerted by these *attestations*, that they would be themselves the first to offer them in evidence—their Lordships would then see what little dependence ought to be placed upon attestations signed by persons whose fingers were still shooting with the pain occasioned by THUMBSCREWS, and who nevertheless could be prevailed on to declare under their hands that the man who had wronged, tortured, plundered them, was their benefactor. These attestations, accompanied by the other evidence which the Commons would produce, would serve to shew the deplorable state to which the wretched natives of India were reduced, who were so much in awe of their rulers, that fearing to complain, they even bestowed *praises* upon their *undoers*, or, as the Poet said,

"They pay that HOMAGE with the MOUTH which the HEART would fain DENY, but DARES not."

These attestations would serve at the same time to shew the influence which

Mr. Hastings still possessed in India, through the means of his creatures, who fill all the subordinate offices of government in that country. This influence was sufficient to procure signatures to any kind of instruments framed by the friends of Mr. Hastings, in his defence; instruments which, however, unfortunately for the prisoner, would defeat the very purpose for which they were procured; for they actually *denied* some important points which Mr. Hastings himself *admitted*; and therefore they might be said to mean this, "If Mr. Hastings accuses himself of having taken any money from us, don't believe him, though he speaks against himself; for he has not plundered us, or behaved otherwise to us than kindly." That this might not be thought a *forced* construction, Mr. Burke read from one of these attestations a declaration made by a native of great rank in India (from whom Mr. Hastings admitted he had received money) to himself—"*that the Governor General had never taken any from him.*"

Mr. Burke remarked humorously upon the stile of these attestations, which, he said, all bore evident marks of *European* birth. It was clear, he said, that they had been *first* written in *English*, in all the simplicity of a Western stile; that they were afterwards translated into *Persian*, and adorned with the lofty metaphors of the *East*; and then turned once more into *English* for the benefit of their Lordships. The same ideas, the same arrangement ran through them all: the first that was seen was liked, and being liked was adopted by all, which shewed that they were extremely well calculated to convey the ideas of the prisoner's friends, and were therefore re-echoed from every part of India; and thus was verified what Voltaire had justly said,

"Les BONS MOTS sont toujours RE-DITS *."

* Amongst others, Mr. Burke made the following remarks, with a view to throw ridicule over the whole of the attestations, and destroy their effects.

They were, he said, like the LAUDATIONES of the Ancients, with which the advocates of persons under accusations filled their speeches, and on which they relied much for the acquittal of their clients.—"But how little," said Mr. Burke, "ought Judges to trust to these LAUDATIONES, when there scarcely ever was a criminal yet brought to trial who had not been able to produce them in his defence. Their Lordships knew that even Caius Verres had plumed himself upon the LAUDATIONES, by means of which he hoped not only to escape punishment, but to overturn the accusation, and cover his accusals with confusion, by shewing that there was not even a shadow of ground for the charges they

Having thus far cleared his way, Mr. Burke went into the consideration of the 7th charge.

To shew that the Government of India was in a peculiar manner exposed to temptation and corruption, he caused to be read by Mr. Grey, one of the Managers, a minute entered in the council-book of Calcutta, by the late Lord Clive, which pointed out the existence of this evil, and the necessity of opposing a barrier against it. His Lordship recommended it in strong terms to the Court of Directors to settle upon the Governor General, and upon the Councillors, such salaries as might place them beyond the reach of temptation; and to strictly forbid them to receive any presents from the natives.

The Court of Directors felt the pro-

priety of what was thus recommended; they saw the extent to which corruption had prevailed among their servants, who to their own private emolument had sacrificed the interests of the Company, and the character of their country. They, therefore, resolved to form a new government, upon the plan recommended to them, and reposing in Mr. Hastings the highest trust that had ever been placed by them before in any of their servants, sent him to Calcutta, and granted him a splendid support for his new dignity.

By the covenants into which he entered with the Company, Mr. Hastings had bound himself never to receive any present from the natives above the value of 400l.

In proportion as the trust thus re-

" had brought against him. Their Lordships knew that even Caius Verres, whose name for rapacity, peculation, and oppression, had passed into a proverb, and who had nearly destroyed Sicily, was able to procure attestations from that island—that he had made moderation, equity and justice, the rules of his conduct, whilst he was Governor of that country.

" Is it then matter of surprize that Mr. Hastings should procure attestations to his character, from a country where his influence is kept up by means of his numerous dependants, who fill all the subordinate departments of government, and where consequently the wretched natives dare not refuse any thing which the partizans of Mr. Hastings may think proper to ask?

" Mr. Hastings had assigned this reason for turning out all the officers in Bengal who had been indebted to Mohammed Reza Khan for their appointments: That if these people had been suffered to remain in power, it would have been impossible to bring their principal to justice.—If this was a good reason, it would destroy the whole force of the attestations in favour of Mr. Hastings; for to adopt his own words, it might be said that he could not be brought to justice whilst his dependants remained in power in India; and if the example of Mr. Hastings was such as might be followed in any instance, the Commons might, as a preliminary to trial, desire that all the dependants of the prisoner, holding offices in India, should be removed from their situations, for otherwise it would be impossible to bring him to justice.

" But the Commons could not think of imitating the arbitrary disposition of a man, who waged war against even the friends or dependants of the person whom he wanted to punish. So far, therefore, were the Commons from wishing that these people should be dismissed, that they would themselves produce in evidence against the prisoner, those very attestations procured by his friends, and on which he seemed to rely so much for his defence.

" The production of these LAUDATIONES appears to me, said Mr. Burke, to indicate that the prisoner has no great dependance upon the merits of his cause; and I augur but badly of his defence, when I see him resort to those means, to which persons standing at the bar of the inferior courts of criminal law in this country, never fail to have recourse, when they are not able to defend themselves by evidence relating to the facts with which they are charged.—At the Old Bailey, persons who are indicted for murder, burglary, robbery, &c. always call evidence to CHARACTER, when they have no defence with respect to fact.

" Witnesses are then produced, who declare that they have known the prisoner from a boy, that he always bore a good and honest character, and that they would trust him with untold gold.

" But, my Lords, mark the consequence.—This admirable character is generally followed by the verdict—GUILTY—Death; and must always be the case, when a man has nothing but character to oppose to irrefragable proofs; and when character is a commodity so easily to be manufactured or procured."

posed

posed in Mr. Hastings and the confidence placed in him were great, so in proportion was his guilt in violating them. He maintained the system of corruption which he was sent to destroy, and he took BRIBES, though he was bound not to receive so much as PRESENTS.

With respect to his receiving money, he had admitted, in his defence, that the fact had often happened; but then he justified his conduct in those cases by saying, that money in India is often given as a *tribute*, &c. and that in that light and that only he had received it. But this defence could not bear him out.

There were in India, Mr. Burke said, but *two* species of payments, except for goods bought and sold, that could be called *legal*. One was called a *PESCUSH*, and was the consideration which was given for a grant of zemindaries, lands, &c. The amount of this *pescush* was always specified in the grant, and was always paid into the Exchequer. The second species was called a *nazir* or *nazirannah*, and was given as a token or acknowledgment of *dependence*, from an *inferior* to his *superior*. The *nazir* was always trifling; the highest he had ever heard of in India, as given to a *native*, consisted of 100 pieces of a gold coin worth about *thirty-six shillings each*, and this *nazir* was to no less a man than the Sovereign of Indostan, the Great Mogul himself.

But what might be a proper present to the King of Delhi, would be too trifling for Mr. Hastings, who took *whole lacks of rupees at a time*.

Of the first of these two species of payments Mr. Hastings could not avail himself, because the *pescush* formed a part of the public revenue; and the second could be no gratification to him, because the money that could be *fairly* taken under the denomination of a *nazir*, must necessarily be only to a small amount; and therefore when he took large sums from the natives, for his own private use, they could be considered, let them be coloured by what they might, only in the light of *bribes*.

As to the PROOFS which he intended to produce of the RECEIPT of BRIBES, Mr. Burke said they were of two kinds—one *presumptive*, the other *positive*; and both, he hoped, would be found fully sufficient by their Lordships.

He begged leave here to discriminate the parts of the charge to which he intended to apply the *presumptive* evidence,

Mr. Hastings was directed by his superiors in Leadenhall-street to remove Mohammed Reza Khan from the offices which he held under the Nabob of Bengal, and to enquire into his conduct during his administration, which was suspected to be corrupt.

Mr. Hastings executed the order, but with a degree of rigour not enjoined, and not warranted by his instructions—He had caused Mahommed Reza Khan to be arrested, and carried under a military guard to Calcutta, where he was kept a prisoner for near two years, under a severe restraint, for he was not only not suffered to pay a visit, but was not permitted even to receive one.

This treatment of a man of illustrious rank disgusted the natives, who beheld with indignation a man confined under a military guard, who had filled the highest offices in the state; who had been a kind of Viceroy of a great kingdom, under the Nabob of Bengal; and who, Mr. Burke said, if he could compare situations in India with those which were in some degree similar in England, united in his own person the several high offices of First Lord of the Treasury, Lord High Chancellor, Lord Chief Justice, and Lord Archbishop of Canterbury, and who, for the support of his great dignity, had a salary or income of 100,000*l*.

Though it might have been proper to enquire into the conduct of a man suspected of mal-administration, yet Mohammed Reza Khan was not a person to be treated with indignity; all that could be necessary on the occasion was, to secure him that he might be forthcoming when his judges were ready to try him. The rigour used by Mr. Hastings was employed for corrupt purposes, namely, to compel that Minister to *purchase* the indulgence of the Governor General.

Mr. Hastings practised upon his fears more ways than one. He acted as if he was going to proceed against his prisoner with unrelenting rigour; and with this view he did a most cruel thing for he turned out of office every native in the whole kingdom of Bengal, who was indebted for his appointment to Mohammed Reza Khan, and filled up all the vacancies with persons known to be enemies to that unfortunate Minister. In consequence of this measure, great numbers of poor people were reduced to poverty by the loss of places which

which they had long held, and which were their only support.

Mr. Hastings had justified this measure to the Court of Directors by saying, that if it had not taken place, the influence of Mohammed Reza Khan would have stifled all evidence of his guilt, through the means of his creatures in office.

Who would not think, said Mr. Burke, after such steps as these, that Mohammed Reza Khan was going to be put to a severe trial? Who would not think that he was to expect nothing but inexorable justice? But those who might think so, knew little of Mr. Hastings; for in fact, Mohammed was dismissed not only without punishment, but without trial. So that it might fairly be presumed, all things considered, that as it was not the *guilt* of this man which had caused him to be treated with so much unjustifiable rigour at first, so it was not to his *innocence* that he was indebted for the restoration of his liberty, and the end that was put to all proceedings against him. It might be fairly inferred he had made his *peace* with Mr. Hastings, and given *proofs* of his innocence with which a Court of Justice would not have been satisfied.

He trusted their Lordships would agree with him, that in this whole proceeding there were strong *presumptive* proofs that Mr. Hastings sold the Mussulman his liberty, and the latter actually paid the price for it.

There was something in *circumstances*, which he considered in evidence as infinitely stronger than the most *positive* oath. And as accusations might fairly be repelled in some situations by the *characters* of the parties accused, so they might be supported by them and by circumstances.

For instance, said Mr. Burke, if a man was to swear to me that he had seen the Lord Chancellor, the Lord Chief Justice, and the Archbishop of Canterbury, in their robes, *robbing* on the highway in open day, I would not believe such an assertion, though upon oath, because the act so sworn to would be contrary to all rules of *probability*, and to the *characters* of the personages so accused, and consequently incredible: But were I to see a man, whose character for *corruption* was generally known, take a rich person into custody, threaten him with the vengeance of the law, and the power of

his enemies, and afterwards not only not punish that person, but enlarge him without having so much as tried him, I would instantly say to myself, the rich man has *bribe* his prosecutor, and purchased impunity with the sacrifice of a part of his wealth. And in saying this I should not fear that I was passing a *rash* judgment, though I had no *positive* proof that the *bribe* was actually given.

The next point to which Mr. Burke said he intended to apply *presumptive* evidence, related to Munny Begum. But he apprized their Lordships, that he did not mean to confine himself entirely to *presumptive* proofs on this head.

When Mohammed Reza Khan was removed from his offices, one of which was that of Guardian and Chief Minister to the then Nabob of Bengal, who was at that time a minor, Mr. Hastings was ordered by the Court of Directors to supply his place with some man of known integrity.

Did Mr. Hastings pay ready obedience to this order? No. On the contrary, he completely disregarded it: and instead of a *man*, named a *woman* to fill the important office of Guardian and Minister to the young Prince.

The circumstances attending this appointment were of a nature that strongly indicated *corruption* in the Governor General.—To make this appear clearly, Mr. Burke gave a short history of Munny Begum. This woman was born a SLAVE, a DANCING GIRL, by TRADE, and PROSTITUTE by PROFESSION. Those who knew any thing of India, knew that the DANCING GIRLS were the very outcasts of society. Dancing in India was not considered as in Europe; it was not that *majestic* and *graceful* movement which gives ease and dignity to the carriage, which polishes the manners without corrupting the morals, and which the most innocent and virtuous of the fair sex very properly study to acquire and improve. DANCING in India consisted in *immodest* and *disgraceful* gestures, and in actions which could not be named in an assembly such as he had the honour to address. This dancing girl, this Munny Begum was employed, among others, to dance before the present Nabob's father, who taking a liking to her, for some time carried on a commerce with her: she told him at last she was pregnant, and made him believe she was so by him. Upon this he took

took her into the seraglio, where she was delivered of a son, and where she was treated with the same respect as the rest of the ladies of that place. Her influence was so great, that she procured her *bastard* son to succeed the Nabob, to the prejudice of his legitimate children, and accordingly he ascended the throne, after the death of his supposed father. His mother had all authority under him ; but his reign was of a short duration, for he died a minor. The eldest legitimate son of the old Nabob was then raised to the throne, and *his* mother, a princess of illustrious birth, was invested with the dominion of the seragli, from which Munny Begum had been removed at the death of her son. Under this young Nabob, Mohammed Reza Khan governed the country. When Mr. Hastings removed him, the *prince* of the Nabob requested the Governor General would appoint *him* to fill the vacancy occasioned by this removal ; the uncle was a Prince whom Mr. Hastings himself described as a man without ambition, and by no means dangerous ; and therefore he might have been appointed with safety to the Company's interest. But this Prince was *poor*, he had nothing to support himself and family but a pension from the Company : a person *so situated* had little chance of succeeding with a man of the character of Mr. Hastings.

The person most fit for the seraglio was the respectable mother of the Nabob ; but Munny Begum, the DANCING GIRL, who knew the world, gained the favour of Mr. Hastings by means of *irrefragable* arguments, and by him she was appointed ruler of the kingdom, in the name of her *step-son*, whose own mother was removed.

Thus, instead of appointing a *man* to succeed Mohammed Reza Khan, according to the Company's orders, he appointed a *woman*, who, according to the manners of Asia, could not be *seen*, and to whom no one could speak but on a different side of a curtain from her ; and a woman so situated was to preside over the administration of all affairs, civil, judicial, religious, and military.

By order of the Company, Mr. Hastings was to appoint to this situation a person of *integrity* : the way in which he obeyed his superiors was by trusting the government of the country, and the education of the young Prince, to

a person who, having been a DANCING GIRL, had been of course a PROSTITUTE by PROFESSION.

To account for this strange conduct in the Governor General, Mr. Burke said, Munny Begum offered *two lacks of rupees*, or about 22,000*l.* sterling for the situation. Mr. Hastings accepted the offer, touched the money ; and she, to the disgrace of the British government, was placed at the head of affairs.

But the disobedience of orders did not stop here. The Court of Directors ordered Mr. Hastings to make reductions in the Nabob's establishments, and cause the savings to be paid into the Company's treasury. They ordered him at the same time to cause regular accounts of those savings to be kept, and transmitted from time to time to England. But though the reductions were made, no account of the savings was kept, at least none were ever transmitted to England. The savings, however, were known to amount to about 90,000*l.* a year, the whole of which, it was extremely probable, Mr. Hastings had converted to his own private use ; for what was remarkably suspicious in all these transactions relative to Mohammed Reza Khan and Munny Begum, the Governor General acted without the concurrence, or so much as the *knowledge* of his Colleagues in the Council.

Thus all the pains which the Company had taken to place their servants beyond the reach of temptation, or at least of *corruption*, were entirely lost—in vain had they settled upon the Governor General an income of near 30,000*l.* sterling a year, which had been thought sufficient for that purpose, not merely by the Court of Directors, but by the Council of Bengal itself.

If Mr. Hastings himself was to be believed, it was sufficient not only to support in splendour the office of Governor General, but enable him “ in a few years” (the prisoner's own words) “ to lay by enough to make him comfortable and independent all the rest of his life.” The prisoner had enjoyed that situation *near fourteen years*, and yet it had been transpired abroad by his friends, that he was comparatively poor. In his Minutes in Council, he boasted that fame and the good opinion of his country were his great objects, before which all considerations of *fortune* or *wealth* died away.

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The desire of fame for services done to one's country, though not *virtue*, was certainly the best *counterfeit* of it, the best substitute for it, and was truly laudable. The man who felt an ardent passion for honest fame would be found superior to every grovelling passion; all his actions would partake of the ruling passion, and bear the impression of nobleness. But nothing of this was to be found in Mr. Hastings: he *affected* to *disregard* a brilliant fortune, and to look only for a competent one, and to *court* only the *good opinion* of his country. What was now his situation? He had failed in every thing. By his own declaration, he who wanted a competency only, was a *bankrupt* in fortune; and he who had constantly in view the *good opinion* of his country, which he considered as the great reward of all his labours and services, was now a *prisoner* at their Lordships' bar, his COUNTRY HIS ACCUSER.

The accusations which stood against him were not for acts of direful desolation and slaughter. Such acts in general were *privileged* crimes, the effects of *superior wickedness*, and consequently were not likely to be often repeated. But the crimes which were laid to the charge of Mr. Hastings were of the grovelling kind, which did not usually grow upon a *throne*, but were hatched in *dunghills*. However, when they were carried to the throne, and sanctioned by the highest authority, then they became not the effects of a momentary passion, but the consequences of a systematic plan, which originating in a *fordid* soul, could never give way to a noble and generous impulse.

The fountain-head being corrupt and impure, the whole stream must partake of the corruption; the chief ruler himself being the example of corruption, must necessarily encourage, instead of repressing and destroying it; and thus a general system of bribery and speculation take place through the whole government. This, Mr. Burke said, was a true picture of the public service in Bengal, from one end of it to the other.

Having dwelt long upon this point, Mr. Burke next adverted to those acts of corruption of which Nuncomar had given information to the Council.

The charges brought by Nuncomar against the Governor General depend-

ed upon many circumstances, and he had named so many witnesses who were to support them, that if they were false, he afforded the very best means that Mr. Hastings could wish to refute them.—But without ever declaring that they were false, he refused to meet them; he vilified the accuser, and repeatedly dissolved the Council, that his colleagues might not be able to proceed in their enquiries into these charges. They made some progress, however, and Nuncomar's evidence together with that of his son Rajah Gourda's was taken, in which they mentioned the sums which they themselves had paid him in the name of Munny Begum; the very species of coin in which they were paid; the bags in which the money was tied up, and the exchange that was paid, and to whom, for giving the current coin of Calcutta in its stead. This was corroborated by a letter from Munny Begum herself: and to crown all, Nuncomar desired that Canto Baboo, Mr. Hastings's own banyan, might be examined to all these points. The Governor General, however, who was bound by regard for his own honour, who was bound by the orders of the Company to enquire into acts of speculation and corruption, and by an act of Parliament, under the authority of which Commissioners had been sent to India for that purpose, not only disobeyed the Company and the Legislature, but would not suffer his own servant to obey either. It might be proper, perhaps, for a man bold in conscious reprobation, to oppose his *general* character to *general* accusation; but it was a mark of weakness, not to say of guilt, to oppose *general* character to *specific* accusations, such as were the charges brought against him by Nuncomar. He had indeed reviled that Rajah, called him wretch, and the most contemptible of his country.

But Nuncomar was in his own country, by his *birth* equal in dignity to any *Peer* among their Lordships; in *sacredness* of character to any *Bishop*; in *gravity* of deportment to any *Judge*; and in *fortune* to most *Princes*.

Here Mr. Burke said, that if the Council should hereafter be so injudicious as to attempt to bring forward the conviction of Nuncomar, for the purpose of destroying the effect of these charges, he would open that scene of

aloud to their Lordships' view, and shew them how Nuncomar was MURDERED under forms of law.

The last point on which Mr. Burke touched, was the lack and a half of rupees given to Mr. Hastings, as a bribe, when he went to Moorshedabad, the residence of the Nabob of Bengal. It appeared that the Treasurer of that Prince, not knowing under what head of accounts to place the expenditure of that sum, consulted the Prince, who desired him to put it under the head of expenses for *entertaining* Mr. Hastings.

Now such expenses could not have been incurred on this head; for the entertainment must have been not only extravagant, but absolutely beyond the means of the Nabob, as their Lordships should see.

By order of the Company the Nabob's allowance for *all* his expenses, had been reduced from 250,000l. a year to 160,000l. now the entertainment of Mr. Hastings, at the rate of a lack and a half of rupees for less than three months that he staid with the Nabob, must cost 200l. per day, and near 70,000l. a year; and as Mr. Middleton had also a large allowance for *entertainment*, almost the *whole* of the Nabob's income must have been spent upon these *two persons*; a degree of hospitality this would be, which no Prince in Asia or Europe could afford to exercise.

But what rendered it extremely shameful in the Governor General, who admitted that he cost the Nabob the lack and half of rupees, though he would not allow that he had *pocketed* the money, to furnish such an article as this to appear under the head of *entertainment*, was, that by the reduction of the Nabob's income, he had reduced to absolute beggary about *fourteen hundred* of the decayed *nobility and gentry* of Bengal, who by the introduction of the English into this country, were driven from all places, both civil and military, which were engrossed by these foreigners, and had nothing in the world to subsist upon, but small pensions from the Nabob, which were taken from them when that Prince's allowance was reduced.

Had the expence to which Mr. Hastings put the Nabob been allowed for the use of this body of gentry, it would have fed them all, numerous as it was; but it was as it were fated, that Mr. Hastings could not so much as *dine* without creating a *famine*.

Thus it was that Mr. Hastings preyed not upon the *opulent*, but the *poor*, the *needy*, and the *veggars*: at their expence did he cram his *insatiable* maw.

He was not like the *Eagle*, which seemed to pride itself in contending with a prey that was able to struggle with it; but he was like a *Vulture*, that fastened upon *carion*, a prey that could make no resistance.

There was a mockery of feeling in the account given by Mr. Hastings of the situation of these decayed gentlemen. He said that he reduced without reluctance the Nabob's elephants, menageries and stables; but when he was obliged to cut off the pensions, which he knew to be the only support of these unfortunate families, he laid his heart was bleeding whilst he was doing it.

EXECRABLE HYPOCRISY! cried Mr. Burke, INSULTING PITY! I know not in which this man was most cruel—in stripping these people of their only support—or in *pretending* to feel for their distresses, when the daily expence to which his table put the Nabob, would have removed them all.

It being by this time four o'clock, Mr. Burke said, he would not detain their Lordships any longer *this day*, with the opening of the seventh charge.

Their Lordships then adjourned the Court.

THIRTY SEVENTH DAY.

WEDNESDAY, APRIL 22.

The Lords met in their robes as usual; but on account of the sudden indisposition of Mr. Burke, the Trial was adjourned till Saturday, and a message sent to the Commons to acquaint them therewith.

THIRTY-EIGHTH DAY.

SATURDAY, APRIL 25.

This day Mr. Burke proceeded in his opening of the seventh article of impeachment.

He reminded their Lordships, that when he had the honour of addressing them, he shewed that from various circumstances attending many acts of the prisoner's administration, there was strong ground for *presuming* him to be guilty of corruption, and that this presumption of guilt was turned into *certainty* by *positive* proofs—so that their Lordships would have in this case the most satisfactory evidence—*presumptive* evidence, arising from the nature and circumstances

circumstances of the measures on which the charge, then under consideration, was founded—and *positive* evidence, consisting either in *written* documents, or the *oral* testimony of witnesses.

The *presumption* of guilt, arising out of circumstances which *attended* the measures of the prisoner's government, was confirmed also by a variety of circumstances that *followed* those measures. On this ground he begged leave to go a little at large into the conduct of the prisoner, which, he contended, was of itself, and without any other proof, sufficient to fix upon him the guilt of peculation and corruption.

When the Council of Bengal was new modelled, and Sir John Claverings, Colonel Monson, and Mr. Francis, were appointed members of it, orders were sent out by the Court of Directors to that Council, to enquire into the acts of peculation and oppression that might have been committed upon the natives by any of the Company's servants in India.

In obedience to these orders, the three gentlemen whom he had just named set on foot an enquiry into the truth of charges of bribery and peculation delivered at the Board against the Governor General himself. But that gentleman, instead of meeting the charges with that confidence which became a man bold in conscious innocence, refused to make any defence: nay, he refused to meet the accusers—and resisted all enquiry to the utmost of his power. With this view he repeatedly dissolved the meetings of the Council, and endeavoured, as far as in him lay, to frustrate their researches, and to withstand the authority of the Company, by opposing the execution of the orders sent from the Court of Directors to the Governor-General and Council, to set such enquiries on foot.

Such a line of conduct could not have been adopted by the prisoner but with a view to screen himself from the consequences, which he well knew must follow enquiry. The shifts to which he was driven to save appearances, at the same time that he wished to escape detection and punishment, served only to confirm and give additional weight to the charges that had been brought against him.

Notwithstanding his desire to be thought *innocent*, he never once attempted to deny the receipt of the mo-

ney which he was accused of having taken as a bribe; but instead of attempting to defend himself, began an attack upon his colleagues at the Council Board, whom he charged with partiality, and a kind of conspiracy to destroy his character.

Instead of shewing that the accusation which had been recorded against him was unfounded, he endeavoured to prove, as far as bare assertions could prove it, that Sir John Clavering, Colonel Monson, and Mr. Francis were at the bottom of this accusation, and that it was on their suggestion that it was brought.

But even if that had been true, and these gentlemen had really encouraged others to stand forward and accuse the Governor General, could it be said that it followed from such a circumstance, that the accusation was false, and that his colleagues had suborned and countenanced false witnesses?—Might it not be inferred that the encouragement held out on such an occasion, might be no more than this—that these gentlemen would protect all persons, who, having any discovery to make relative to acts of bribery, corruption, or peculation, committed by any of the Company's servants, would stand forward, and communicate it to the Board?

As it was at least *possible* that the motives of these gentlemen might be good, what could the world think of the only species of defence made by Mr. Hastings, which consisted in nothing but the *vilifying* and *traducing* of the gentlemen, who, in obedience to the orders of the Court of Directors, their superiors, were endeavouring to discover whether any, and what acts of peculation had been committed by the English in India, and by whom?

Even if these gentlemen had been animated in their enquiry by a spirit of hostility to Mr. Hastings, and had given evident marks of a determined resolution to represent him to the Court of Directors as guilty of peculation, still, as in pursuing the enquiry, no matter with what motive, they were in point of *fact* acting in obedience to the orders of their superiors, it was the duty of the accused, at least, to declare that the accusation brought against him was unfounded. Had Mr. Hastings done this, he might have availed himself afterwards of the advantage which this evident hostility of his colleagues would

would have given him, and made it a collateral part of his defence.

But from the day on which the charges were first brought, down to the present moment, Mr Hastings had never once ventured to say that the grounds of the charges were false, and that he had never received the sums of money which he was accused of having taken as bribes.

But it was a much easier task to rail at his colleagues, than to disprove the charges. Unfortunately, however, for Mr. Hastings, the characters of those colleagues stood far beyond the reach of his calumny. The gentleman amongst them against whom the Governor General levelled his most bitter invectives, and whom he considered as most hostile to him, was the late Sir John Clavering, whom many of their Lordships must have known.

No one who had ever been acquainted with that worthy man, or with his character, but must feel that such a person was incapable of acting under the impulse of the pitiful motives to which Mr. Hastings had ascribed his conduct. The world knew that he had passed through the different degrees of the military profession with a character, which pointed him out as a model for the whole army to imitate. His reputation for unimpeachable honour and inflexible integrity, endeared him to all his acquaintance, and to the whole army. His heart was as free from the meanness which prompts some men to supplant others, or to injure them in their good name, as his reputation was from stain or blemish. In a word, Sir John Clavering was no less an ornament to human nature than to his profession; he was as good a man as he was an able officer.

What advantage then could Mr. Hastings expect to derive from an attempt to impute base or dishonourable motives to such a person? This was a question to which Mr. Burke said he would give no other answer than this—That the prisoner must have thought it safer to do or say any thing rather than plead to the charges brought against him, or suffer the enquiry to proceed, whilst the possibility of crushing it was still in his power.

In point of *fact*, Mr. Hastings derived no advantage from this attack upon Sir John Clavering and his colleagues. The Court of Directors, to whom all the minutes that had been entered in the

Council-books by both parties, relative to the charges brought against Mr. Hastings, had been sent, in the most express and positive manner approved of the conduct of the former, and censured the latter for having resisted the enquiry which they themselves had strictly enjoined the Council to institute and pursue: and they further commanded Mr. Hastings to give them satisfaction on those points which formed the heads of the accusation against him.

But the Court of Directors could not make Mr. Hastings pay obedience to their orders. He promised, indeed, that he would *explain* those points; but he found means to evade the performance of his promise.

Here Mr. Burke observed, that when a person accused says he will *explain* the grounds of the charge, he must be considered as admitting the *facts* upon which the charge is founded, though he might afterwards deny the *inferences* drawn from them. For none could be so absurd as to *explain* what had *no existence*.

But this explanation had never yet been made; the excuse pleaded by the prisoner, whilst he was in India was, that as the charges might be made the grounds of a prosecution, or a suit in a Court of Law, he ought not to disclose his defence in the first instance, but to reserve it till he should be called upon to make it before a proper tribunal.

Since his return to England, his excuse was, that as no suit or prosecution was commenced against him, he considered the business as dropt, and a defence consequently unnecessary.

Thus this excellent master of the science of defence was able to parry off the necessity of explaining his conduct by means the most singular and opposite. If the accusation was to end in a trial, he was not to explain before trial; and if the prosecution was suffered to sleep, then there could be no necessity for an explanation: so that the charges might remain unanswered for ever.

Mr. Burke begged leave to make a remark or two upon the danger which the prisoner affectingly said might attend him, if he was to explain the grounds of the charges, whilst there was a possibility that they might terminate in a trial.

From the good fellowship in which it appeared to their Lordships that Mr. Hastings and Sir Elijah Impey lived, they would see that the former could

have no great occasion for much anxiety about the event of any suit that might be instituted against him in the Court of the latter. Sir Elijah Impey was not a likely man to *strain the law* to make it reach Mr. Hastings, particularly to favour a false accusation. The prisoner, therefore, could not be deterred by any apprehension of danger in India, from an explanation of his conduct.

The next thing then to be considered was, whether he had any thing to apprehend in a Court of Law in England from such explanation.

He certainly had not, if Mr. Hastings himself might be believed: for in recommending to the Court of Directors a plan which he himself had proposed in the early part of his administration, which would have left all the Company's servants in India at the mercy of the Governor General, who might dismiss them from the service without giving them a hearing; he said, that the forms of proceeding and rules of evidence laid down and established in the Courts of Law in England, would rather facilitate the escape of an Oriental delinquent from punishment, though the cries of the people *should* call for vengeance on him, than enable the Company to bring him to punishment.

Upon this principle, then, it might be said, that Mr. Hastings had flattered himself from the necessity of explaining his conduct, under the apprehension of a trial from which he had *nothing* to fear, not because he was *innocent*, but because the law could not reach him, on account of the particular circumstances of places, persons, and distance.

The scruples and delicacy of Mr. Hastings might therefore be safely pronounced to be affected, or assumed only for the purpose of evading the promise of an explanation, because he knew he could not explain away the force of the accusation, or establish his innocence.

If it had been from an idea that it would be lowering his dignity to defend himself against charges which he conceived to be countenanced by those whom he considered as his enemies in the Council, surely he would have availed himself of the opportunity which the death of Sir John Clavering and Colonel Munton gave him, and by which he was reinstated in the plenitude of power, to prove that those gentlemen had been actuated by malice

against him, and that the charges had not even a shadow of foundation in truth.

But had he since their death attempted to prove any such thing? No; he had ever since observed a silence upon those charges, which nothing could force him to break.—Innocence owed it to itself to plead at least *not guilty*, and declared a false charge to be so. But Mr. Hastings had not paid even this faint tribute to innocence. Why? Because he was not innocent. GUILT had put a SEAL upon his lips, which nothing could break.

Had there been in the breast of Mr. Hastings a spark of that honest indignation, which never fails to fire the breast of an innocent person wrongfully accused, the language and sentiments which Sir John Clavering had held and entertained of him, and which he had recorded in the archives of the East-India Company, would have made it blaze forth.

In a minute entered by Sir John, and which was read by Mr. Burke, that General declared, "that Mr. Hastings had made himself a degraded character in the eyes both of India and of Europe, for his speculation, his corruption, and oppressions."

Such language as this had been unable to make Mr. Hastings vindicate his innocence and his honour, by entering upon his defence. He did not *dare* to defend himself, because he knew he could not but disclose his GUILT, if he was to attempt to answer the charges.

What, said Mr. Burke, could make this proud and haughty Ruler of India submit to such language, and bear with such opprobrium? *Guilt*, conscious *guilt*. The cursed love of MONEY had got possession of his soul; and in the contemplation of his detested WEALTH, he found sufficient consolation for the loss of character and of honour. Under the lash of Sir John Clavering, and the execration of all Asia, he seemed to say with the Poet—

—*Populus me sibilat, at mihi plaudo*—
—*et nummos contemplor in arci.*

It was this love of money that had made him deaf to the calls of glory, and callous to the feelings of honour. It was this unbounded and insatiable passion for money, that had seared his conscience and his feelings; and happy in the accumulation of wealth, even by the foulest means, he could bear,

un-

unmoved, the most cutting reproaches of Sir John Clavering: "He lay down in his STYLE OF INFAMY—WALLOWED IN THE FILTH OF DISGRACE—" and RATTENED upon the OFFALS "and EXCREMENTS OF DISHONOUR." He suffered his name to be branded not only to contemporaries, but to posterity, by the charges and observations recorded by Sir John Clavering against him in the archives of the Company. Whilst that gentleman lived, Mr. Hastings did not dare to meet those charges; nor had he attempted to give the least answer to them even after his death: they remained to this day unanswered, and unrefuted.

Posterity would not credit the aspersions to which Mr. Hastings had had recourse, instead of a defence, and which he dealt so liberally upon Sir John Clavering and his colleagues.

The records of the Company would shew how little these aspersions were founded. The panegyrics pronounced by the Court of Directors upon Sir John Clavering, and recorded in their archives, bore a glorious testimony to the honour, character and merits of that great man. When tired out by the constant opposition given by Mr. Hastings to the execution of every plan either recommended or commanded by the Company, Sir John Clavering sent home a resignation of his seat at the Council Board, the Court of Directors refused to accept it; and gave for reason, that his retreat from the Council Board would be an irreparable injury to the Company's service. They at the same time bestowed the most unequivocal and unqualified approbation on the *whole* of his conduct, whilst he had been in their service; and entreated him, by his love for his country, not to think of resigning a situation in which he had done so much good, and in which so much more remained to be done.

Sir John Clavering died soon after, and *literally* of a *broken heart*. Mr. Burke read from one of the Company's books part of a letter written on that occasion to the Governor and Council, in which they spoke in terms of the most warm panegyric of the deceased, and expressed a deep concern for the heavy loss which the Company had sustained by his death.

Here Mr. Burke asked if *such* a man, so revered and honoured, was capable of bringing unfounded accusations, or countenancing false accusers. He

asked, whether there was a man upon earth, how bold soever he might be in conscious innocence, Mr. Hastings excepted, who would have thought lightly of charges countenanced by such a man as General Clavering? He said he was sure that every man who had a character that *could* be injured by an accusation, would have thought it necessary to defend it, when the name of Sir John Clavering was in any degree connected with the charge; because such a name would give a weight to it, in the opinion of the world, even though the witnesses might not be the most unimpeachable men.

Why then did not Mr. Hastings meet the charges under such circumstances? Because, said Mr. Burke, he was *guilty*, and could not but expose his guilt, by attempting to disprove it. This *presumption* against the prisoner grew naturally out of the circumstances of the case; and in the opinion of all impartial men ought to be considered as tantamount to an admission of the charge.

Mr. Burke next observed, that the prisoner had invariably mistaken his own situation; he considered the Company, in the case of the charges alluded to, as *plaintiffs* and *prosecutors*, and himself as a *defendant*; whereas the true relation in which they stood to each other, was that of *MASTERS* and *SERVANT*. When the Directors required him to explain the grounds of his conduct in this case, he declined obedience to their requisition, and said he would reserve his defence for a Court of Law.

Mr. Burke asked their Lordships, what any one of them would think of such language from his steward. If a steward was suspected or accused of oppressing the tenants, dilapidating the estate, and embezzling the rents, and his Lordship should desire him to explain his conduct, and remove the grounds of suspicion; what would be the astonishment of that Lord, if he should hear his steward reply, "I will give no explanation now; bring your action against me; I will reserve my defence for a Court of Law."

This was the precise language that Mr. Hastings held to the Court of Directors, his *MASTERS*, to whom, as their *SERVANT*, he owed obedience, and to whom he was of course bound, when they required it, to explain his conduct.—But it was not very surprising that a man should pertinaciously withhold explanation, however

had seen or heard of these costly entertainments. Of all the virtues there was only *one* which derived lustre from concealment, and that was *charity*: **PUBLICITY** was part of the **SPLENDOR** OF ALL OTHERS, particularly **HOSPITALITY**.

When an entertainment was given to great personages, preparations were made, and numbers of guests were invited to do honour to those for whom the feast was made: but when a prodigious sum, such as 16,000*l.* was said to have been expended in an entertainment, which had made no noise, which had not been heard of in the city where it was supposed to have been given, it was natural for people to suspect, that there was a mystery in the business, calculated to conceal some transaction, which could not bear the day.

Mr. Burke having got thus far, informed their Lordships, that he would not take up any more of their time this day; but would, he hoped, be able to conclude his opening the next day he should have the honour of addressing their Lordships.

He observed that there were two grounds of evidence on which he intended to support the seventh charge; the

one arising from *concealment*; the other from *detraction*, or *confession* of the prisoner, who finding it impossible to conceal any longer from the scrutinizing eye of Parliament his many and enormous bribes, at last confessed that he had received certain sums of money privately, and made a merit of discovering what he said he might have kept for ever from the knowledge of the world.

One of these two grounds of evidence, Mr. Burke said, he had already opened to their Lordships; the other he intended to open as briefly as possible at the next sitting of the Court.

Here Mr. Burke concluded for the day; and their Lordships adjourned the Court a little before four o'clock to April 30.

ON THURSDAY, APRIL 30, as soon as the Lord Chancellor had taken the Woolfack, in the House of Peers, Mr. Hobart brought a message from the Commons, intimating a desire, on account of some particular circumstances attending the trial of Warren Hastings, that their Lordships would defer that trial to a future day.*

This

* This request proceeded from the following Business having been agitated in the House of Commons since the last adjournment of the Court, and which we think it necessary to introduce, for the better elucidation of the object and motives of the Trial.

On Monday, April 27, Major Scott rose in his place and said he held a petition in his hand from Warren Hastings, Esq. who was now upon his trial for high crimes and misdemeanours: this petition, he said, stated, that a Right Hon. Member of that House (Mr. Burke) whom the House had appointed to conduct this trial, had in the course of the prosecution introduced a great deal of extraneous matter, and which had not been found by the House. The Major observed, that although twenty charges had been exhibited at the bar of the Lords against Mr. Hastings, yet only seven charges had been maturely considered, and that no member in the House but himself had read the last thirteen charges. At the same time that the Right Hon. Manager introduced this foreign and extraneous matter, he was always affirming that every thing that he advanced was upon the authority of that House, and that he had all his instructions from it.

The Honourable Member next adverted to particulars; to the famous story of the Three Seals, to the affair of Devi Sing, &c. which had been mentioned by Mr. Burke a twelvemonth ago. But the principal part of the petition related to an affidavit which Mr.

Burke was supposed to make last Tuesday in Westminster Hall. The petition stated, that he had then accused Mr. Hastings of murdering Nuncomar by the hands of Sir Elijah Impey. Major Scott contended that these charges were all foreign to the prosecution, that they were not to be found among those which had been considered by the Commons, and that they implied a higher degree of criminality than those of which Mr. Hastings had been accused by the House. At the same time he had no opportunity of answering them. He therefore prayed in his petition, that he might have an opportunity of answering these charges, or that the House would give him such other redress as they in their wisdom should see proper.

Major Scott took notice of the very great delay that had taken place in this trial, and of the vast expence Mr. Hastings had been put to on that account. He was going to state something that had happened in the House of Lords relative to this trial, when he was called to order by the Speaker.

Mr. Fox then rose and said, he conceived every thing that had been said by the Honourable Gentleman was irregular and unprecedented.

Mr.

This message being read, and taken into consideration,

Earl Stanhope proposed that the request of the Commons should be complied with, and moved, that the trial of Warren Hastings, Esq. be postponed

till Tuesday next (May 5). This was agreed to; and

Mr. Hubart being called in again, was desired to acquaint the Commons with the resolution.

Mr. Pitt was of a different opinion.

Major Scott said, that all those extraneous facts, which had been advanced by the Hon. Manager, were false and ill founded, and that the Hon. Manager had coolly and deliberately misrepresented facts, knowingly and wittingly.

The Major then read the petition, which contained the substance of what we have stated, and concluded with moving that it might be brought up.

When this motion was put from the chair,

Mr. Fox declared that this motion was so new and unprecedented, that he hoped and trusted it would be negatived. He wished to consider three things; 1st, the object of this motion; 2dly, the complainant; and 3dly, those to whom the complaint was made.

1st, As to the object of the petition, which complained of certain expressions that had been used by the accuser more than a twelvemonth ago, if Mr. Hastings had any complaint to make, he ought to have made it within a reasonable time. This he had not done in this case, which was the strongest proof that he had no real complaint. If any Member means to observe on words used by any other Member, he must do it immediately after those words have been uttered. This rule was founded in excellent sense; for it was obvious that it was only then he could give any tolerable account of the words, when they were clear in his memory.

2dly, As to the complainant, was he one of his Hon. Friends who had the honour to conduct the prosecution? No. Was he any Hon. Member on that side of the House? No. Was the complainant a Member of Parliament? He was not. Had he been a Member of the House, Mr. Fox said, this circumstance would have had great weight with him; but when he considered that the complainant was the culprit himself, it was impossible but that there must be expressions that would be disagreeable to him. The fact was, that every thing, every part of the prosecution was disagreeable to Mr. Hastings and his agents; and his Hon. Friend might look upon it as a compliment paid to his industry, his oratory and abilities, that such a petition had been presented. For his part, he was no way solicitous to conduct the prosecution in a way agreeable to Mr. Hastings, but in such a manner as was agreeable to the

dictates of his own conscience, to promote the ends of public justice, and, if possible, to bring them to punishment. If the culprit himself was allowed to present petitions to that House whenever he was pinched, he could by this means divert the prosecution, by turning his accusers into culprits and criminals. This was unexampled in the Journals of that House, or in the history of this country.

3dly, With respect to those to whom this complaint was made, it was the Commons. He contended that it ought to have been the Lords, who were his judges. If anything improper had been said, their Lordships heard it, and might have stopped the prosecution. The Commons might remove the present Managers, if they thought they had misconducted themselves, and appoint new Managers. But Mr. Fox was of opinion, that when the House of Commons appointed a Committee to conduct any trial, they must leave that Committee to exercise their best judgment on this business. He thought they had been unfairly dealt with. They had a most arduous task to perform, they had a most powerful culprit to conduct with, a man who had been Governor-General of India for fourteen years successively, who had it in his power to confer many obligations, and had procured many friends. They had to contend with all the power and all the corruption of India; and now the House of Commons, who had appointed him and his friends to prosecute this man, were going to desert them, by withdrawing their support. He thought this extremely hard, unfair, and treacherous, and begged of the House never to let it appear on the Journals of that House, that any petition presented by a culprit should be attended to. This was totally unknown in other nations, and perfectly subversive of all the principles of justice.

Mr. Pitt said, he agreed perfectly with what the Right Honourable Gentleman had advanced in the conclusion of his speech, with regard to the support that was proper to be given to the conductors of this prosecution; the character, honour and dignity of that House and of this country were deeply involved in it. But the single question before the House was this: the House having given limited powers to the Managers to conduct this trial in a particular way, and only to try him for certain misdemeanours, shall the Managers have a

discretionary power to exceed their authority, and to accuse Mr. Hastings of any crimes and misdemeanours they please? He apprehended not. If the Managers transgressed the limits of their authority, they were accountable to that House, from whom their authority was derived, and not to the House of Lords. The Lords could not stop him. He was ready to confess that there was a wide distinction between the words used a year ago, and those respecting the murder of Nundoomar, which were spoken very recently; and the petition had been presented the very next day complaining of these words, which he regarded as the principal part of the petition. He saw no objection to this petition being brought up, there seemed to be nothing irregular or disorderly in it. He thought the honour and justice of the House were bound to do it. It was a privilege of the meanest subject of this country; and for what reason should they deny to Mr. Hastings what every man claimed as a privilege, who enjoyed the rights of a citizen of this country? At the same time, though he thought the petition ought to be brought up, he did not say what would be proper to be done on it.

Mr. Burke said, he believed he must look at some distance for a character and approbation—to cool and dispassionate posterity. He had hitherto trusted to the good sense of the cause; and to the approbation of his own mind. The House had appointed him the prosecutor of Mr. Hastings, and he had executed that important trust in such a manner as appeared most agreeable to his own best judgment, and was most consistent with the honour and dignity of the House; and if after he had gone through such a world of labour and fatigue, they thought proper to remove him, he should not be sorry for it: it was what he wanted—he would then enjoy ease and quiet, and be happy. Mr. Burke openly and generously confessed that he had said Mr. Hastings had put to death Nundoomar through the agency of Sir Elijah Impey, because he thought it essential to the prosecution. He also adverted to the other charges in the petition, and explained his reasons for mentioning them. He adverted to a paper which contained 1431, which Major Scott was said to have received in 1782 for certain writings. One item was 5s. 6d. for an attack on Burke's veracity. Mr. Burke said he was very sorry that his veracity had sold so cheap, though he could not help it.

Mr. Burke, in justifying his conduct, went into a vast field of argument and observation, in which we shall not attempt to follow him.

Mr. Wyndham spoke against the bringing up the petition, and contended, that if an accuser were not permitted to mention any

other crimes but those particularly specified it would necessarily put an end to all legal proceedings, and to all public justice; for it is natural to suppose that crimes are closely connected together, and that one of them may be proved through the medium of the other. If this proof was not to be admitted, the offender could never be brought to justice. He desired gentlemen to consider a little the enormous load of business that pressed on the Managers, and that if the House of Commons received this petition, instead of supporting the Managers in this prosecution, which it was certainly their duty to do, they would throw many new impediments in their way; for there might be no end of petitions, and their labour, which was already so great in Westminster Hall, would be protracted *ad infinitum*, and Mr. Hastings would never be convicted. He conceived the Lords were the proper judges of this business, and if the Commons interfered in it, they would throw an insult on the Lords. It would be saying, "We were obliged to take notice of that which you ought to have censured." He thought this petition was presented merely for the purpose of insulting his Hon. Friend.

Mr. Fox said, the Hon. Major, by the bye, had taken notice of the great delay that had been occasioned in this prosecution; but they were all well acquainted with the circumstances of the country, a short time ago, which sufficiently accounted for the delay; and he was certain there was not a man in the House, who thought the trial would have commenced this year a single day before it actually did. He said, he should not like to be accused; but if he were, he should like to have an agent who possessed a mind like Major Scott.

Nundoomar accused Mr. Hastings of bribery; Mr. Hastings then accused him of forgery; and Nundoomar was hanged, because Sir Elijah Impey was Chief Justice. His Right Hon. Friend had accused Mr. Hastings of High Crimes and Misdemeanours, and had not met with the same fate, because Sir Elijah was not Chief Justice of this country. Mr. Fox lamented the time and fatigue that must necessarily be undergone, if Mr. Hastings was allowed to present petitions whenever he pleased. He conceived the best way to shorten the business would be to refer their speeches to Mr. Hastings and a Committee of his friends, before they went to Westminster Hall. Mr. Fox wished to know how they meant to identify the expressions laid in the petition.

Colonel Phipps thought it was not the proper time to mention this. He was likewise of opinion that the House of Commons were the proper judges whether the Managers, who had been delegated by them had ex-

ceeded

ceeded the limits of their authority, and that Mr. Hastings was entitled to the same privileges which were possessed by every British subject.

Sir James Johnstone said, he was one of those who thought Mr. Hastings was guilty, that he deserved punishment, and he was sorry it was not death. If any improper expression had fallen from any of the Managers, the Lord Chancellor might have corrected it. His would be against the receiving of the petition, if they were to sit till four in the morning.

General Bargoynne said a few words against the receiving of the petition.

Mr. Addington begged leave to say a few words on the subject. He thought it would be inconsistent with the honour and justice of the House to crush an individual, who was already pressed down, and perhaps by the weight of his crimes, though God Almighty only knew how that was. The meanest subject of this country had redress, when he had suffered an injury; and he did not understand on what principle they could deny to Mr. Hastings that which every man in this country had a right to claim, and therefore thought the petition ought to be received.

Sir Richard Sutton observed, that some Hon. Gentlemen had taken notice of some facts which had been stated in certain Reports, and because they had found them there, they took it for granted they were true, tho' that by no means followed; for these facts being found in such Reports only shewed that it would be proper to inquire into the truth of them, but that they by no means ought to have been taken for granted till they had been proved. Sir Richard spoke in favour of the petition.

Mr. Fox said, he congratulated the Hon. Gentleman (Major Scott) at the success his petition would meet with, but he by no means congratulated that House or his country, because he thought such a precedent would be dangerous in the extreme to both. Mr. Fox here repeated some of his former arguments.

Mr. Anstruther contended, that the Lords were the proper judges of this business, and the consequence of such petitions would be, to let the culprit into the whole of your plan, by shewing him how such and such facts were relevant to the matter under consideration. This trick would be frequently practised; and therefore, for the sake of public justice, this petition ought not to be received.

Mr. Pulteney thought, for the sake of justice, that the petition ought to be received. At the same time he was ready to admit, that petitions of this sort might tend very much

to obstruct the channels of justice. He thought, however, that no extraneous matter ought to be introduced.

Major Scott still continuing to assert, that Mr. Burke had coolly and deliberately misrepresented facts, was called to order by Mr. Fox, who appealed to the Speaker, if such assertion was not a personal affront on his Rt. Hon. Friend (Mr. Burke).

The Speaker then observed, that he was ready at any time to have given his opinion, what he conceived to be regular and what not. The debate, he said, had been carried on very irregularly by both sides of the House; and in the beginning of the debate, he had great difficulty to distinguish what was irregular and disorderly from what was not.

The Gallery was then cleared.

Strangers were admitted again in about a quarter of an hour. When we entered the Gallery the petition had been brought up by Major Scott, and it had been ordered to lie on the Table.

Mr. Burke was contending against this motion, and said, if he deserved censure for his conduct, the House were perpetrators of his guilt, since they had been present, and heard him with approbation.

Mr. Sumner said, if the House were perpetrators in the guilt of the Right Hon. Gentleman, they ought narrowly to watch his conduct, and to prevent him as much as possible from committing errors.

Mr. Marshall spoke a few words on the subject, and was against the petition.

Mr. Pitt did not suppose that any person in the House conceived that the petition was meant to be attended with any such consequences as that of removing the Right Hon. Manager, but he thought it would be prudent this petition should be taken into consideration on some future day, as early as possible, as it would be improper to proceed any farther in the trial till this business was determined; and he should therefore move that it be taken into consideration on Thursday.

Mr. Marshall thought it would be extremely improper, that the moment the Managers came out of Westminster Hall from prosecuting Mr. Hastings, they themselves should become defendants.

Mr. Pitt proposed that a message should be sent to the Lords, to desire them to put off the trial till Friday.

Mr. Fox was rather against this business coming forward on a very early day, as he thought Gentlemen ought to consider and weigh its importance, by putting themselves for a moment in the situation of the Managers.

It was at length agreed upon to take this business into consideration on Thursday.

THURSDAY, April 30.

The Chancellor of the Exchequer rose, and observed, that when the Petition of Mr. Hastings was presented and received, it was understood by the whole House, that the subject of complaint would have been on that day discussed. It was not however convenient that such discussion should then take place, as the regularity of the proceedings of the House required certain forms to be observed, which would render it necessary to postpone the consideration of the Petition until to-morrow. He understood it to be the inviolable rule of that House, in all similar cases to the present, that the subject matter of the debate should be entered upon the Journals, and that it should also appear thereon, that the Right Honourable Gentleman (Mr. Burke) against whom the Petition complained, was present in his place when regular notice was given of the day on which the complaint was to be considered. He knew in fact that the Right Honourable Gentleman (Mr. Burke) had every notice he wished; the motion he meant to offer was merely for the maintenance of the regularity of the proceedings of the House; he therefore moved, "That a Petition having been presented from Warren Hastings, Esq. against a Manager of the prosecution, and the name of Edmund Burke, Esq. being mentioned in the said Petition, notice is given to that Gentleman, now being in his place, that the House will to-morrow take the matter of the said Petition into consideration."

Mr. Burke rose, and fully concurred with the Right Hon. Gentleman in the propriety of his motion, for the purpose of preserving the regularity of the proceedings of the House, by entering on the Journals the subject of the complaint, and the notice having been given formally to the person complained against; it was, however, a ceremony he was willing to dispense with, having no objection to the House taking any part or the whole of his conduct into consideration in the manner they thought most proper, being convinced, on the most cool reflection, that he had every reason to confide in, and be satisfied with, the decision of the House, whatever it might be, as he could implicitly rely on their honour. To their decision he would with deference submit. He begged however leave to repeat what he had on a former day said, that if they wished to remove him from the management of the prosecution, he was ready and willing to retire. He would wait for the determination of the House, and declared that he should not at-

tend the House to-morrow upon the discussion of the business, being determined to suffer judgment to go by default. If any judgment was to be given, he wished the House to have as little trouble as possible, and should therefore, for the purpose of avoiding any difficulty of proof, and to shew how willing he was to meet the charge, admit that he did assert the words complained of, "That Mr. Hastings murdered Nundcomar by the hands of Sir Elijah Impey." The Right Hon. Gentleman then, at some length, entered into the reasons which had induced him to make the assertion; the House, he hoped, would recollect the peculiar circumstances attending the case of the unfortunate Nundcomar; he was possessed of certain knowledge of the bribery and corruption of Mr. Hastings, and the charge of presents exhibited against that Gentleman was necessary to be supported by circumstantial evidence, in which he could not avoid introducing the proceedings against, and the fate of Nundcomar, as principal and material features; it was therefore natural to allude to that subject in the opening of the charge. He observed, that it was singular at the moment Mr. Hastings was on the point of being convicted of the foulest bribery, he should bring forward a charge against his accuser; he was convinced that it was done with the view to divert the attention of the House and the Public from Mr. Hastings's criminality, to a complaint against his accuser. The singularity of the present Petition was not, however, confined to the observations he had made. The House might act inconclusively in going into a discussion of the Petition. It was a notorious fact that Mr. Hastings had at the Bar of the House gravely given in, some time since, in writing, signed by his own hand, a paper purporting to be his defence, which paper was accepted as his defence by the House of Commons; but when the Managers came to substantiate the charges, and quoted parts of the defence in support of the charges, Mr. Hastings immediately procured the Hon. Gentleman (Major Scott) to swear before the Lords, and to assert in that House, that the defence was not written by Mr. Hastings, that many parts were written by other gentlemen, and that some parts Mr. Hastings never saw.

Major Scott spoke to order, and charged the Right Hon. Gentleman (Mr. Burke) with having taken great liberties in his speech, which he would not suffer to pass unexplained, and called upon him for an explanation. The Hon. Major was proceeding, when

The Speaker rose, and, by the support of the House, put an end to the conversation, by desiring the Major to sit down.

Mr.

Mr. Burke again rose, and was proceeding in his speech, by saying, he despised all attempts to interrupt him.

Mr. Sumner immediately called him to order, not conceiving that any Member had a right to say he despised the interruption, when disorderly, of any Member of that House, whether a friend to Mr. Hastings or not.

The Speaker again interposed; and Mr. Sumner sitting down,

Mr. Burke proceeded. He said, the House ought to recollect, that if obstacles were suffered to be thrown in the way of the Managers of the Prosecution, it would ultimately tend to the disgrace of the House; if the Managers were crippled by their powers being restricted, the prosecution would be defeated, and villainy triumph over justice. He concluded by again repeating, that he trusted implicitly to the honour of the House, being convinced in his own mind that they would protect their Managers to the utmost, and enable them, for the purposes of justice, to proceed with vigour.

The Chancellor of the Exchequer said, he could not conceive the Right Hon. Gentleman to raise in his objection to the Petition, in cautioning the House against receiving it, because it was signed by Warren Hastings; for a defect on former occasions had been done by that Gentleman, he could not have forfeited his right of petition to the House.

Mr. Adam said, the Right Hon. Gentleman did not seem to understand the argument of his Right Hon. Friend.

Mr. Adam resisted it with great force and pertinacity. He contended, that before this petition had been received by the House, it ought to have been authenticated by calling Mr. Hastings to the Bar of the House, and asking him whether it was his petition? For any thing they knew, this might not be Mr. Hastings's petition; and when it came to be considered, he should prove that the House had received it by mistake, and that they ought not to have received it. Mr. Hastings had been continually accusing the Managers of delay, though he could shew that this was so far from being true, that every species of expedition—every sort of diligence—had been used in order to expedite this trial, and to bring it to a conclusion. He, as an individual, was but little concerned whether this petition was considered to-day or to-morrow; but the Managers of Mr. Hastings's prosecution were deeply concerned—the public were likewise deeply concerned, for the Courts of Law would have sat this day in Westminster Hall, had it not been taken for granted that the trial was to have gone on.

Mr. Adam contended that the petition did

not contain any accusation against any one individual, but was general, and was a censure on the whole Committee.

The Chancellor of the Exchequer said, the Hon. Gentleman (Mr. Adam) had misunderstood his meaning in his moving to postpone the consideration of the Petition until to-morrow. He did not make that motion for the purpose of giving the Right Hon. Gentleman (Mr. Burke) notice of the Petition being to be considered to-morrow, who he knew in fact had sufficient information, but merely for the sake of regularity in the proceedings of the House.

The question on the Chancellor of the Exchequer's motion was then put and agreed to.

The Chancellor of the Exchequer then moved, "That a message be sent to the Lords acquainting them that circumstances had happened, which rendered it inconvenient for the Commons to proceed that day in the trial of Warren Hastings, Esq. and the Commons requested their Lordships to adjourn the further consideration of the Trial to a future day."

This motion being agreed to, Mr. Hobart was ordered to carry it to the Lords.

Mr. Hobart went immediately to the Lords, and having waited near an hour until their Lordships met, he presented the message, and being returned, reported that their Lordships had agreed therewith, and postponed the further proceedings on the trial until Tuesday next at ten o'clock in the morning.

Adjourned.

FRIDAY, May 1.

Major Scott moved the reading of the order of the day, for the House taking into their consideration the petition of Warren Hastings, Esq.

The order of the day being read accordingly, and the question put, that the petition be now considered,

Mr. F. Montague immediately rose, and stated, that he had just then received a letter from a Right Hon. Member of that House, (Mr. Burke) which he begged to read as part of his speech, and was as follows:

MY DEAR SIR,

WITH the consent, as you know, and the approbation of the Committee, I am resolved to persevere in the resolution I had formed and had declared to the House, that nothing should persuade me, upon any occasion, least of all upon the present occasion, to enter into a laboured, ingenious, artificial defence of my conduct. Such a mode of defence belongs to another sort of conduct, and to causes of a different description.

As a faithful and ingenious servant, I owe to the House a plain and simple explanation of any part of my behaviour which shall be called

called in question before them. I have given this explanation; and, in doing so, I have done every thing which my own honour and my duty to the House could possibly require at my hands. The rest belongs to the House. They, I have no doubt, will act in a manner fit for a wise body attentive to its reputation. I must be supposed to know something of the duty of a prosecutor for the public, otherwise neither ought the House to have conferred that trust upon me, nor ought I to have accepted it. I have not been disapproved by the first abilities in the Kingdom, appointed by the same authority, not only for my assistance, but for my direction and control. You, who have honoured me with a partial friendship, continued without interruption for twenty-four years, would not have failed in giving me that first and most decisive proof of friendship, to enlighten my ignorance, and to rectify my mistakes. You have not done either; and I must act in the inference. It is no compliment to mention what is known to the world, how well qualified you are for that office, from your deep parliamentary knowledge, and your perfect acquaintance with all the eminent examples of the ancient and the modern world.

The House having upon an opinion of my diligence and fidelity, (for they could have no other motive) put a great trust into my hands, ought to give me an entire credit for the veracity of every fact I affirm or deny. But if they fail with regard to me, it is at least in my power to be true to myself. I will not commit myself in an unbecoming contention with the agents of a criminal, whom it is my duty to bring to justice. I am a member of a Committee of Secrecy, and I will not violate my trust, by turning myself into a defendant, and bringing forward, in my own exculpation, the evidence which I have prepared for his conviction. I will not let him know on what documents I rely. I will not let him know who the witnesses for the prosecution are, or what they have to depose against him. Though I have no sort of doubt of the constancy and integrity of those witnesses, yet because they are men, and men to whom, from my situation, I owe protection, I ought not to expose them either to temptation or to danger. I will not hold them out to be importuned, or menaced, or discredited, or run down, or possibly to be ruined in their fortunes by the power and influence of this delinquent, except where the national service supercedes all other considerations. If I must suffer, I will suffer alone. No man shall fall a sacrifice to a feeble sensibility on my part, that this time of day might make me impatient

of those libels, which by despising through for many years, I have at length obtained the honour of being joined in commission with this Committee, and becoming an humble instrument in the hands of public justice.

The only favour I have to supplicate from the House is, that their goodness would spare to the weakest of their members any unnecessary labour, by letting me know as speedily as possible, whether they wish to discharge me from my present office. If they do not, I solemnly promise them, that, with God's assistance, I will as a Member of their Committee pursue their business to the end: that no momentary disavowal shall slacken my diligence in the great cause they have undertaken: that I will lay open with the force of irresistible proof this dark scene of bribery, speculation, and gross pecuniary corruption, which I have begun to unfold, and in the midst of which my course has been arrested.

This poor Indian stratagem of turning the accuser into a defendant, has been too often and too uniformly practised by Devi Sing, Mr. Hastings, and Gunga Govia Sing, and other Banyans, black and white, to have any longer the slightest effect upon me, whom long service in India Committees has made well acquainted with the politics of Calcutta. If the House will suffer me to go on, the moment is at hand when my defence, and included in it the defense of the House, will be made in the only way in which my trust permits to make it, by proving juridically on this accusing criminal, the facts and the guilt which we have charged upon him. As to the relevancy of the facts, the Committee of Impeachment must be the sole judge: until they are handed over to the Court competent to give a final decision on their value. In that Court the Agent of Mr. Hastings will soon enough be called upon to give his own testimony with regard to the conduct of his Principal; the Agent shall not escape from the necessity of delivering it, nor will the Principal escape from the testimony of his Agent.

I hope I have in no moment of this pursuit (now by me continued, in one shape or other, for near eight years) shewn the smallest symptom of collusion or prevarication. The last point, in which I should wish to shew it, is in this charge concerning pecuniary corruption,—a corruption so great and so spreading, that the most unspotted characters will be justified in taking measures for guarding themselves against suspicion. Neither hope, nor fear, nor anger, nor wantiness, nor discouragement of any kind, shall move me from this trust;—nothing but an act of the House, formally taking

away

away my commission, or totally cutting off the means of performing it. I trust we are all of us animated by the same sentiment.

This perseverance in us may be called obstinacy inspired by malice. Not one of us, however, have a cause of malice. What knowledge have we of Sir E. Impey, with whom, you know, we began; or of Mr. Hastings, whom we afterwards found in our way? Party views cannot be our motive.—Is it not notorious, that, if we thought it consistent with our duty, we might at least have an equal share of Indian interest, which now is almost to a man against us?

I am sure I reverence the House as a Mem-

ber of Parliament and an Englishman ought to do; and shall submit to its decision with due humility. I have given this apology for abandoning a formal defence, in writing to you, though it contains, in effect, not much more than I have delivered in my place. But this mode is less liable to misrepresentation, and a trifle more permanent. It will remain with you, either for my future acquittal or condemnation, as I shall behave*.

I am with sincere affection and respect,

My dear Sir,

Your faithful friend

Gerard Street, And humble servant,
May 1, 1789. (Signed) EDMUND BURKE.

* To this letter the following answers have been given in the public prints.

To the P R I N T E R.

S I R,

MR. Burke's motive for publishing the letter which Mr. Montague read in the House of Commons, ought to be, to enable those gentlemen who differed with him to enter into a fair discussion of its contents.

Some of the assertions of the letter are of so very extraordinary a nature, that I should have been sorry indeed, if so fair an opportunity had not been given to me of meeting them with a most direct and unequivocal contradiction. Mr. Burke says, that the House having, upon an opinion of his diligence and fidelity, put a great trust into his hands, *ought to give him an entire credit for the veracity of every fact that he affirms or denies*. Never was there, I believe, so monstrous a proposition, and the vote of the House has proved already the fallacy and the absurdity of it. If it were true, observe what a dilemma Mr. Burke would involve the House in. We have had two India Budgets since this Impeachment began. In each year the India Minister has dealt with peculiar force and emphasis, upon the mildness, the justice, and the excellency of the Government of Great Britain in Bengal; has explained the situation of its foreign connections and dependencies, and has last year taken credit of the aggregate of the resources of Bengal, of a surplus, after the payment of all its expences, of two millions sterling. The House has heard these statements with great satisfaction, and has voted those resolutions which Mr. Dundas moved. Could the House have done so, had they believed Mr. Burke? No; for, in contradiction to every man's declaration who has any means of information, Mr. Burke obstinately persists in painting to the world, in the name of the Commons of Great Britain, the miserable, distressed, depopulated, and ruined state of Bengal, Benares, and Oude. I affirm, therefore, that the House has not, cannot, and ought not to give entire credit to Mr. Burke, for the veracity of every fact that he affirms or denies.

In another paragraph he says, that the Committee must be the sole judges of the relevancy of the facts, till the competent Court finally decides; and he adds, "In that Court the Agent of Mr. Hastings will soon enough be called upon to give his own testimony with regard to the conduct of his Principal. The Agent shall not escape from the necessity of delivering it, nor will the Principal escape from the testimony of his Agent."

In this passage I know Mr. Burke is not serious, nor will the world believe him, because every man of common sense knows, that there is a common-sense way of doing business, and that if I could give the testimony which Mr. Burke insinuates I can give, Mr. Fox, the Managers, the five lawyers they employ, would insist upon Mr. Burke's coming to the point at once, they would not permit him to speak four days upon presumptions, and the probabilities of presumptions; but, as Mr. Burke has now committed himself, I hope the public will not forget the broad assertion that he has made. For the present, I will inform them, that I was examined upon this subject in Westminster Hall above four hours, with all the ability, ingenuity, and industry of Mr. Fox, Mr. Burke, and Mr. Sheridan; and this is not the only instance they have given of skill in putting questions, as the world well knows. I have been examined upon the same subject by a Committee of the House of Commons five years before. When I was called as a witness in Westminster Hall, no information was given to me of the point I was called to depose to; and, in the course of my examination, Mr. Sheridan observed, that there was a contradiction between my evidence then given, and that which I gave formerly on the same subject. A Noble Lord afforded me an opportunity of calling for that

former

The letter being concluded, Mr. Montague said he conceived it to be unnecessary to add another word on the subject; he could not, however, refrain declaring, that he reflected, with the highest satisfaction on the honour he had enjoyed for twenty-four years in the

former evidence. It came; it was read; but the ability of Mr. Sheridan did not enable him to point out a difference, and, armed with the robe of Magistracy, he left his assertion to shift for itself. No question can be put to me that I will not answer most unreservedly; and as to money transactions, I should have no objection if all that I am concerned in, were proclaimed at Charing Cross. I have never lent my name to give currency to a bond, and afterwards refused to discharge it.

Mr. Burke says, that then perseverance may be called obstinacy inspired by malice, and adds, "Not one of us, however, has a cause of malice. What knowledge have we of Sir Elijah Impey, with whom you know we began; and of Mr. Hastings, whom we afterwards found in our way?—Party views cannot be our motive. Is it not notorious, that, if we thought it consistent with our duty, we might at least have an equal share of the Indian interest, which now is almost to a man against us?"

One would really imagine, that Mr. Burke was writing to an old woman born in the last century, or to an infant in the nurse's arms. That he should gravely put such a question to a gentleman of character and information, and deep political knowledge, is, indeed, most wonderful. Does not Mr. Montague know, that those who have been his bosom friends through life, took up the cause of Mr. Hastings most warmly and successfully in the year 1776, when Lord North wanted to remove him, *because he had been accused*? Does not Mr. Montague know, that the Marquis of Rockingham men defended him, *because the accusation was not proved*? Does not Mr. Montague know, that the accusations were actually those which, at the distance of fourteen years, Mr. Burke has revived, though three several times since they were made, Mr. Hastings has, by the unanimous voice of the Legislature, been appointed the Governor-General of Bengal? Does not Mr. Montague know, that in 1781, when he sat as a Member of the Judicature Committee, they examined very particularly into the circumstances of the execution of Nundocomar? Does not Mr. Montague know, that precisely at the same period Lord North brought in a Bill, by which Mr. Hastings was a fourth time appointed Governor-General of Bengal, and for ten years? Does not Mr. Montague know, that neither Mr. Burke, nor any one man of his Committee, intreated Lord North to suspend the appointment because Mr. Hastings was concerned in the death of Nundocomar? He knows that at that time no such suspicions existed, nor do they now, though it was found expedient to say that which the Commons have disavowed.

But, says Mr. Burke, *we found Mr. Hastings in our way*. He never spoke more truly in his life.

They did so, but not in April 1781. They found him in their way when they had turned out Lord North the next year; then, and not till then, did the plot thicken; nor was Mr. Hastings the only man they found in their way. They found Mr. John Mordaunt in their way; and they made a report which had for its object his removal, and a censure of Lord North for appointing him. They found Mr. Winter in their way; for they made another report, in which they affirmed, that both he and Sir John were implicated in the criminality of Mr. Hastings. The resistance of the Proprietors, and the death of the Marquis of Rockingham, prevented their plans from taking effect. They resigned, and in a few months came in with additional power, by an unexpected junction with an old enemy. Then Mr. Fox brought in his memorable Bill, and again they found Mr. Hastings in their way, for his friends joined most heartily in opposition to that measure, with a very great majority of the nation. I cannot possibly look into the heart of a man, and discover the motives of his actions; but, I believe, there is not in Great Britain one man of common sense, or who has read beyond the History of Tom Thum, who will say with Mr. Burke, that party views cannot be the object of their prosecution of Mr. Hastings.

Mr. Burke says, "Is it not notorious, that if we thought it consistent with our duty, we might have at least an equal share of the Indian interest, which now is almost to a man against us?"

There is an insinuation here, which it is incumbent upon Mr. Montague to do away. I deny the truth of it in the most solemn and unequivocal manner. None of us have forgot the late important struggles, nor the active part which Mr. Burke took in them. During that period, or any other, was the least overture made directly or indirectly on the part of Mr. Hastings by any man living to deprecate the resentment of Mr. Burke, or his party? I affirm there was not, and at the very moment when their possession of power appeared (whether with or without cause I know not) to be inevitable, I spoke of them precisely in the manner

acquaintance of the Right Hon. Gentleman (Mr. Burke), who was admired for his eloquence, and for the depth and extent of his understanding: the qualities he however

most admired in his Right Hon. Friend were the qualities of his heart; his invincible integrity, and his unbounded benevolence.

Major Scott rose for the purpose of stating

that I had done, when their elevation appeared to be more distant. If no reply is given, the insinuation will be treated by the world as it deserves.

I will take upon me to declare, that no overtures were at any time made by Mr. Hastings or his friends to deprecate the violence of his opponents, though an overture was made to them. At a very critical period, namely, the night before Mr. Fox brought in his Bill, Mr. Sheridan, who made it, would have met me the next day, had I not declined the meeting. How far he was empowered, or by whom empowered to treat, I know not; but after having declined that meeting, which was intended as an opening to an accommodation, I did not expect to hear it gravely asserted at any time, as a matter of notoriety, that Mr. Burke and his friends "might, if they thought it consistent with their duty, at least have an equal share of the Indian interest." Mr. Burke's meaning is too obvious to be missed, but it has no fort of foundation in fact.

I am, Sir, Your humble Servant,

Holles-Street, May 9.

JOHN SCOTT.

To the P R I N T E R.

S I R,

I AM obliged to you for inserting my letter so early in your paper, and as I must look upon the publication of Mr. Burke's letter to be a fair appeal from him to the public, I shall submit some further remarks to the candour and good sense of the same tribunal.

In his late speech, he gave us a long account of Munny Begum, whom he called, "a Dancing Girl, a common Prostitute, a wicked Woman," and bestowed upon her a variety of opprobrious epithets, in so far that three-tenths of the ladies who heard him, must have departed with the most unfavourable opinion of this venerable matron. If the House were to give Mr. Burke entire credit for the veracity of every fact that he either affirms or denies, it would upon this occasion be in one of the most unfortunate dilemmas that any public body was ever involved in; for Mr. Burke himself, in the Eleventh Report of the Select Committee, gave the House the following *very different* account of Munny Begum, in the year 1783: "It will be proper to state to the House the situation and circumstances of the women principally concerned, who were in the Seraglio of Jaffier Ally Cawn at his death. *The first of these* was called Munny Begum, a person originally born of poor and obscure parents, who delivered her over to the conductress of a company of dancing girls, in which profession being called to exhibit at a festival where the late Nabob took a liking to her, after some co-habitation, she obtained such influence over him, *that he took her for one of his wives (and she seems to have been the favourite), put her at the head of his Harem,* and having a son by her, *this son succeeded to his authority and estate;* Munny Begum, the mother, *being by his will a devisee of considerable sums of money, and other effects,* in which he left a charge, which has since been applied to the service of the East India Company."

All the latter part of this account we know to be strictly true; and the first may be so also, although it will be impossible for Mr. Burke, or any other person in England, to prove it. Munny Begum, by Mr. Burke's own account, was the wife, and the favourite wife of Jaffier, the superior of his Seraglio; and Lord Clive took a legacy of five lacs upon the strength of her testimony, which forms a fund for the half-pay of our army. If the ever was a dancing girl, it must have been nearly fifty years ago; for the last twenty-seven years she has been treated as the first woman in Bengal. How she acquired her power and influence originally, long antecedent as it was to our own influence in Bengal, is not a matter of the least consequence; but I should be glad to know, if the House is to give entire credit to Mr. Burke for the veracity of every fact he affirms or denies, how they are *traced, when he differs so materially from himself?* In the Eleventh Report, and in the articles presented to the Lords, this Lady is called *the widow of Meer Jaffier*. In his speech, which we ought most religiously to believe, she is styled "a wicked woman, and a common prostitute."

I shall proceed in further elucidation of the danger, as well as of the absurdity, of Mr. Burke's doctrine.

the nature of the proofs he meant to adduce in support of the allegations contained in the petition. He entered into a long and minute detail of Eastern transactions, which went to the acquittal of Mr. Hastings in the particulars alluded to in the petition.—He at some length entered into the proceedings relative to Nundcomar, the whole of which, he said, were laid before Government, subsequent to which Mr. Hastings was repeatedly continued in his high office of Governor-General. After such appointments, what could be the opinion of Mr. Hastings, or of the world, but that the charge was looked upon as a safe and unfounded calumny? Yet this was the mass of evidence which the Manager had been talking of for two days, and which he was so anxious to produce. The Hon. Major proceeding, said, when Mr. Hastings returned to England not a question was asked him as to Nundcomar's informa-

tion; yet his never replying to what was never put to him, was drawn by the Hon. Manager as a strong presumption of his guilt. That House next took up the business of Nundcomar, and passed a decision thereon; yet after that decision, the Manager thought proper to affirm that Mr. Hastings murdered Nundcomar by the hands of Sir Elijah Impey. These, he said, were the different points which he wished to substantiate by evidence; after having done that, he would not presume to offer a motion, being confident that the House would consult its own honour, and do Mr. Hastings justice in the steps they meant to pursue. He was convinced that he could prove the truth of the allegations, but would not presume to point out what measures ought to be taken.

In the course of the Honourable Major's speech, he was interrupted on the point of order by

He has affirmed, that to let the lands of Bengal in farm, was a most wicked, corrupt, and oppressive system, invented by Mr. Hastings, unauthorized by the Directors, and a scandalous violation of the rights of the Nobility and Country Gentlemen of Bengal.

Mr. Burke has represented himself as a laborious, plodding, and inquisitive man, who has been intent upon the discovery of Indian grievances for eight years. What reliance ought the House, or the Public, to whom he has appealed, to place upon his accuracy or fidelity, when it is a notorious fact, that the plan for farming the lands was adopted in various instances three years before Mr. Hastings adopted it; and is thus mentioned by Governor Verelst and Mr. Becher, in a letter to the Select Committee in Bengal dated from Morshedabad, the 30th of July 1769?

"The plan we wished to see generally followed is, that of letting the lands to farm, for a term of years, as we are persuaded that mode tends most to the welfare of the inhabitants, the improvement of the country, and of course the benefit of our employers. We are happy to find the Hon. Court of Directors seem to have adopted the same sentiments; and we flatter ourselves the beginning that is now making, in letting out to farm the districts of *Raje Shaby and Nuddea, will in time be followed throughout the Province of Bengal.*"

Here is another strong instance brought, in order to prove that the House cannot, and ought not, to give entire credit to Mr. Burke.

In his last speech, he read a testimonial which Lord Cornwallis and his Council had transmitted to the Court of Directors from the Rajah of Dinagipore, a boy whom he represented to be eleven or twelve years of age. Mr. Burke might well say, indeed, that such a testimonial, from such a child, was only to be mentioned with ridicule, or with contempt; and in such a contemptible light he did represent it. This testimonial the House has not seen; but if they were to give entire credit to Mr. Burke, they might suppose, *that no other signature appeared to the testimonial.* The fact, however, is, *that it is signed by all the public officers of the Rajah, who manage the business of the Zemindary for him; and the next name to the Rajah's is that of the Naib Zemindar, or Public Minister.* I have been asked seriously, of what validity the testimonial of such a child could be; so completely were Mr. Burke's auditors convinced, by his general argument, that no other signature was affixed to it, but that of the infant, as he called him!

I should encroach too much upon your time, and your paper, were I to produce the various instances that have occurred, by which I could prove that Mr. Burke's doctrine is a most dangerous one indeed. The good sense and the justice of the House rejected it at once; but it appears to me, that Mr. Burke wishes for the decision of the public also upon the same point. If I am right in this conjecture, I am justified in laying before them a few facts, by which they may determine, that neither the House nor the public ought to give him credit for the veracity of the facts he either affirms or denies.

I am, Sir, Your humble servant,

JOHN SCOTT.

The Master of the Rolls, who said, he wished that at the moment of complaining of an irregularity in another place, by the use of improper words, the same irregularity might not be fallen into there, but that the merits of the petition might be fairly proceeded to be discussed, and the words complained of be examined, whether they were relevant to the prosecution, and whether they were or were not authorised by the House.

Mr. Fox desired that the petition might be read; which being accordingly done, he animadverted thereon, observing, that at the moment it complained of the Managers making unwarrantable charges, it did the like, by charging them with several falsehoods under the cover of a protestation.

The Master of the Rolls said, that the House ought to go to the investigation of the allegations contained in the petition, and see whether proofs could be advanced to prove the falsehoods it asserted to have been made.

The Major, after the above short interruption, proceeded to the conclusion of his speech.

Immediately after the Hon. Major had concluded,

Mr. Bouverie rose, and for the purpose of getting rid of the petition moved, "That this House do now adjourn."

Mr. Sumner objected to the motion, and said the House ought to suffer the petitioner to go into a proof of the allegations of the petition.

Mr. Fox declared himself convinced of the falshood of every allegation, excepting that relative to Nundcomar, which was misrepresented. He wished the House to adjourn.

The Marquis of Graham was against the adjournment, and argued the right of the House to suffer the proof being gone into of the words complained relative to the death of Nundcomar.

Sir Joseph Mawbey thought the House would do best to adjourn and get rid of the business; he contended that the House of Lords was the only fit place for notice to have been taken of any improper words, and that such notice ought to have been taken as soon as the words were uttered.

Mr. Ford contended that the House ought not to adjourn, but proceed to the consideration of the petition. If the Lords had objected to, and checked the Managers for any of their proceedings, he doubted not but the Managers would have come to the House, and complained against their Lordships, for presuming to dictate to them the manner

in which they should proceed with the prosecution.

Mr. Fox said, no such thing would have been done as the Managers complaining against the Lords for any interruption: the Counsel for Mr. Hastings had a right to interrupt the Managers, and the only time he opposed such interruption, was not for the interruption itself, but on account of its not being decently made. He had, he said, as high an opinion of the privileges of the House of Commons as any man; he never had, however, expected to have heard what had just been asserted, that the Lords had no right to interrupt the Managers; they certainly had a right, and they must submit to their Lordships whenever they thought proper to stop their proceedings.

Mr. Sumner proposed to Mr. Bouverie to withdraw his motion of adjournment, as he wished to move for the House to receive evidence to substantiate the allegations of the Petition.

Mr. Bouverie refused to withdraw his motion.

Mr. Smith was against the adjournment, and considered it the duty of the House to go into a consideration of the Petition. He considered the assertions of Mr. Burke, which were complained of, merely as declamation.

Mr. Fox again declared, that he fully believed the allegations of the Petition to be false, except that relating to Nundcomar, which was misrepresented.

Mr. Mitford contended, that the Petition ought to be considered; for he said, if the allegations it contained were true, it deserved the greatest attention and redress from the House; if, on the other hand, they were false, the Petition, and the person presenting it, would merit the severest censure. If Mr. Hastings was guilty, he wished him to fall under the weight of his crimes, not under the weight of his prosecutors. The prosecution ought to be conducted with honour to that House, with nothing calumniating or inflammatory on the minds of the Judges. The Lords had not the power of a Judge in the lower Courts to punish the assertor of a calumny; they could do no more than stop his proceeding in such calumny: where then with propriety could the Petitioner appeal for redress but to that House? To them the application was made, and to their candour and justice. He had heard the explanation which the Right Hon. Gentleman offered to the House; it was, however, an explanation that by no means satisfied him: he was convinced, in his own mind, that it was the duty of the House to examine whether the allegations were or were not founded;

and on that fact being ascertained, it would afterwards behove them to ascertain what ought to be done: if the allegations were proved true, to redress the party injured; or should they be proved false, what censure it would be necessary to pass on the petition, and the person offering it.

Mr. Fox agreed with the Hon. Gentleman, that it was improper in cases of life and death to influence the passions; it was not so in misdemeanours. In trials on life or death, the verdict could not be different, the defendant must be found guilty or acquitted; it was not so in an impeachment for a misdemeanour, where aggravation was fair on one side, and extenuation on the other.—The Lords might find a person impeached before them guilty of a misdemeanour; it rested with them, as they conceived the guilt, to order the punishment; it was therefore the duty of the prosecutors to state in the strongest colours and most forcible language the great enormity of the offence. He said, he was ready to allow, that he should abuse his trust, were he to assert a fact he did not mean to prove, or that in his conscience he did not believe to be true: what had been charged against Mr. Hastings he believed to be perfectly so. He insisted, that it was the duty of the House to give the utmost confidence to their Managers, in trusting to them what they conceived to be relevant; for, if they did not, the prosecution could not possibly be carried on with effect. The House, he said, whatever mode they might adopt, or in what way they might think proper to bring forward the present business, must in the end come to the short question,—Whether the Managers were or were not fit to carry on the prosecution?—It was not probable, he said, that at the moment they were about to gather the laurels of their labours by a successful conclusion to the prosecution, they would hazard their cause, the honour of their Country, the honour of the House, and their own honours, by unfounded calumnies. He observed upon the manner in which the complaint came before the House, not from one of their own body, but from the accused person. The whole proceedings on the petition, he said, were not more contrary to precedent than they were to common sense, and ruinous to all public justice for ever. He wished to ask, if the opinion of the late of Nundoomar was new? Was it not asserted by his Hon. Friend (Mr. Sheridan) before the Lords, with an effect never to be forgotten, at the moment that the decision in favour of Sir Elijah Impey was new, that Nundoomar was basely murdered? He would not allow that the House of Commons refusing to impeach Sir Elijah Impey was an acquittal of him;

the House was at liberty at that moment, if they thought fit, to impeach him for the murder. It was his opinion, and ever had been so, that it was a gross murder, and that the unfortunate man had been put to death for the basest purposes. He argued, that if the assertions made against Mr. Hastings could not be proved true, they would ultimately tend to his advantage, it being a well known rule, that the failure of an argument against an accused person made for him. He cared not, he said, on his own account, how the motion was disposed of; it was of little moment to him: he wished, however, to inform the House, that his Right Hon. Friend (Mr. Burke) did not stand single; that every one of the Managers would have used the same strong expressions, had it fallen to their share to open that charge.—There was no difference of opinion on the subject between those who had considered it; the difference only existed between them and those who knew less; and between them and Mr. Hastings. It was therefore fair to presume that the Managers were right; and as the presumption was in their favour, the House ought to be careful to obtain solid proofs against their Managers, previous to their proceeding to censure them. He entered into observations on the difficulties under which the Managers commenced the prosecution, without the assistance of any of the Crown Lawyers, and without the favour of the House on general political topics.—He intreated the House, if they refused the Managers their assistance, not to impede them, but to allow them fair play: if they had not time to assist them, he hoped they would not find time to oppose them, and to endeavour to stir their proceedings. Opposition, he said, were always charged with a wish of getting the places of those they opposed; he wished he could say the same of the present Opposition to the Managers of the Prosecution; the case was however the reverse, and were the Opposition to defeat the Managers, they would not be willing to proceed with the prosecution themselves. If the adjournment should be negatived, he hoped the House would go into a proof of the allegations, and he had no doubt the falsity of them would appear: he would vote for the adjournment, but whether it was agreed to or not, a time he hoped would come when the whole of the present proceedings would be reprobated and expunged.—The conduct of his Right Hon. Friend (Mr. Burke) was honourable to himself, to that House, and to his country: the House in trying him would try all the Managers; they all admired his general conduct, and admired his conduct of that day in absenting himself, feeling the indignity of being

called

called upon as a defendant by the culprit he was prosecuting. He concluded by conjuring the House to take care of their own honour, not to suffer their inquisitorial powers to be infringed or destroyed, and not to suffer it to appear to the world that they were either prevaricators in the prosecution, or acting as counsel for the man they pretended to prosecute.

Mr. Jekyll argued the duty of the Managers conducting themselves with the same caution as advocates for a criminal prosecution. He contended, that it was incumbent on the House, in preservation of their duty to individuals, and of their honour and dignity, to receive the Petition; and if the allegations were true, to give that redress which they were bound in justice to grant to the injured party. He concluded by reprobating the conduct of a Manager who would presume to make a charge against any man, in the teeth of a solemn decision of the House.

Mr. Bouverie's motion was then put, "That this House do now adjourn;" on which the House immediately divided,

Ayes	—	97
Noes	—	158

Majority 61

Major Scott then moved, "That Mr. Gurney, short-hand writer, be called in and examined."

A short conversation took place on this motion, which was objected to, by Mr. Fox, Mr. Adam, Sir Grey Cooper, and Sir James Johnstone, as an improper mode of proving the words of a Member of Parliament.

The Chancellor of the Exchequer, the Marquis of Graham, Col. Phipps, the Attorney General, Mr. Rolle, Mr. Smith, Alderman Le Mesurier, and Sir William Young, were of opinion, that the evidence of the short-hand writer could with propriety be admitted.

Mr. Adam wishing a Committee to be appointed to examine precedents, moved the Previous Question.

A short conversation ensued on this motion, which being agreed to by the Chancellor of the Exchequer, and others on that side of the House, it was carried.

Mr. Adam then moved the appointment of a Committee, which Sir William Young opposed, and insisted upon dividing the House.

The House immediately divided,

Ayes	—	102
Noes	—	17

Majority 89

And at half an hour after nine o'clock the House adjourned.

MONDAY, May 4.

Writs were ordered to be issued for Members to serve in Parliament for the county and town of Cambridge, the former vacated by the death of Sir Henry Peyton, the latter by General Adeane, who has forfeited his seat by the acceptance of the office of one of the Grooms of the Bedchamber.

The Marquis of Graham reported from the Committee appointed to search for precedents apposite to the steps necessary to be taken on the petition of Mr. Hastings, that they had found no precedent immediately in point, but referred the House to the case of Sir Dudley Digges and Elliot, and which case was inserted in the Journals, where they conceived that the House, in respect to words, would find something analogous and worthy their observation.

The report was ordered to be laid on the table.

Mr. Sumner moved, that the order of the day on the further consideration of the petition of Warren Hastings, should be read.

The order of the day being read,

Mr. Sumner next moved, that Mr. Gurney, short-hand writer, should be examined for the purpose of proving the allegations contained in the petition of Mr. Hastings.

Mr. Francis asked whether the short-hand writer was to be examined to the entire of the allegations, or to some particular point. He thought that he should be examined as to the whole of the speech, and that it should be translated, to see whether the tenor of the speech was consistent with the stress laid on the particular words singled out as to have been spoken by Mr. Burke.

Mr. Addington thought it was unnecessary to take a retrospect of the entire business: the charge was made against that part of the speech which related to the murder of Nundomar; he did not see that the House was to take cognizance of any other part of the speech. He would therefore move an amendment, that after the word "examine" should be inserted, "for the purpose of ascertaining so much of the allegation in the petition as respected the affair of Nundomar."

Mr. Sheridan thought the amendment extremely partial; it went to proscribe Mr. Burke from the benefits which might accrue from consulting the general features of his speech, and it wished to confine to a point, the principle of which could not be known without the speech or the whole should be consulted. He did not think it fair or honourable to pin his Hon. Friend down to a specific charge; he did not think it just to garble the petition in favour of the culprit against

against one of the Managers; and whether the House acted through *indulgence* or justice, still it should keep up appearances; and for his part he would, consistent with his idea, give his negative to the amendment.

Major Scott declared he had no communication whatsoever with the short-hand writers. Mr. Burke had made many charges for which there was no foundation. He would not for the present enter into what he had said of Devi Sing and the three seals; but as to his charge of Nundcomar, it dwelt on the mind of Mr. Hastings, and to that particular it was necessary to direct the attention of the House.

Mr. Fox did not think the grounds on which the Hon. Member argued supportable. The prisoner had stated a matter exceedingly injurious to his Hon. Friend. Where, he asked, could he obtain satisfaction? Not before a Court of Justice. Not before the High Court of Parliament. Not from the decision of the House of Lords. The Commons of Great Britain, of whom he was a representative, he appealed to. He only asked them to go into a complete investigation of his conduct, and that ought not to be denied.

Mr. Pitt differed from the Right Hon. Gentleman; it could not, he said, have any effect on the Hon. Gentleman, (Mr. Burke) to have the petition proceeded on consistent with the amendment. Those Gentlemen who had boasted that they were clothed in the Robes of Magistracy, could not be injured by any allegation made by the person whom they were prosecuting, particularly if these allegations were not deemed worthy the consideration of the House. He thought the prisoner should have complained before, that is, as to several of his allegations. He charged the Managers with acting contrary to their former declarations, for that in requesting that the whole of the allegations might be discussed, they created that delay which they had taken so much pains to impute to the conduct of the other side of the House.

Mr. Fox briefly replied: he said, that delay could not be imputed to the Managers; they had said originally that the petition ought not to have been received. He then entered into an able reply to the arguments used by Mr. Pitt, and with his usual ability controverted the assertions and arguments of his adversary.

Mr. Wyndham took a retrospect of the business. He entered into the question at large, and declared that it was evident from what had dropped from others of the Managers, of which not the least notice had been taken, that his Hon. Friend Mr. Burke was singled out by the prisoner, as being the most formidable of his accusers, and having a know-

ledge of his guilt, which must bring him to justice.

Mr. Pitt denied that Mr. Burke had been singled out, for the charge alluded to was not made by Mr. Burke, it originated with another of the Managers (Mr. Sheridan), and therefore this assertion could not have weight with the House.

The House divided:

For the amendment,	115
Against it,	69

Majority 46

After some desultory conversation, the short-hand writer was examined.

It is impossible for us to enter into an exact detail of the arguments made use of on each side, during the examination of Mr. Gurney. After being many times ordered to withdraw, he was suffered at last to give his testimony, with the assistance of his short-hand notes, respecting the words spoken, which proved that Mr. Burke had said, "that he (meaning Mr. Hastings) murdered him (meaning Nundcomar) THROUGH THE HANDS OF SIR ELIJAH IMPEY."

After Mr. Gurney had withdrawn,

The Marquis of Graham rose. He wished not to dwell long on the subject; he would only speak to the authority vested in the hands of the Managers by the House; it certainly did not amount to charging Mr. Hastings with the murder of Nundcomar. He would therefore move, "That no direction or authority was given by this House to bring as a charge against Mr. Hastings, or to impute to him the condemnation and execution of Nundcomar."

Mr. Sheridan requested to know if this resolution was to be followed by any other?

The Marquis of Graham replied, by none, that he knew of.

Mr. Fox had not much objection to the motion, and therefore would not protract the debate by taking the sense of the House upon it. He did not conceive the resolution implied any censure on the conduct of his Hon. Friend.

The Chancellor of the Exchequer expressed much satisfaction at the ready acquiescence of the Right Hon. Gentleman who spoke last. It was a full conviction that the motion carried evident propriety with it; it was a necessary atonement the House owed for the injury done to Mr. Hastings, by charging him with murder; at the same time he begged to be understood as not meaning to throw any censure on the Right Hon. Managers.

Mr. Fox wished to inform the Right Hon. Gentleman that he acquiesced because the motion conveyed no censure upon his friend.

He acquiesced farther, because it did not restrain him from mentioning the transaction in future. He begged the House to observe, that Mr. Burke brought no such charge against Mr. Hastings as murder; that not even an Honourable Baronet last year, when he impeached Sir Elijah Impey, accused him of murder, in the technical sense of the word—it was only in a moral sense. It could not be brought against either of them as a heavy crime, but as a misdemeanor. Nunducumar was taken off in a foul manner—they were the cause, not the effect. That the Hon. Gentleman opposite to him (Mr. Pitt) was satisfied with his acquiescence, he was pleased; he was more pleased, because the motion conveyed no censure. At the same time, he thought it would be disgraceful to the character of a learned Gentleman, who had said, that all Europe looked with eager eyes on this trial, if he neglected to move for the removal of the present Managers.

He might, or might not say, what was agreeable to the Hon. Gentleman who spoke last; but he conceived himself at liberty to mention again the same words Mr. Burke had made use of. He wished the House, if they were dissatisfied with their conduct, to remove them. The Managers did not wish to continue in their office without the confidence of the House. Perhaps the Hon. Gentleman might find persons on his side the House fit for such offices. The Managers were men of different characters. He had relied much on the generosity and honour of the House; he had thought that political professions and prejudices would have been waived on this subject: he had been deceived; he had found a desire to find fault with their proceedings, to listen to complaints against them. The House must be sensible that they must act according to their judgments; that it was not, he had been informed, illegal to instance a larger crime towards proving a smaller; for in the trial of a man for defrauding an insurance office, the prosecutors had alleged and proved the commission of murder against the prisoner.

Mr. Sheridan could not, even at this late hour, help troubling the House with a few observations. He wished the House to look over the charges; nay, to proceed a shorter way: he dared the Hon. Gentleman opposite (Mr. Pitt) to rise and say, that if Nunducumar had not brought the charges for bribery and corruption against Mr. Hastings, he would have died in the manner in which he did.—When he had said, last year, words to the same effect as Mr. Burke's, no notice was taken of them; nay, in the answer delivered in by Mr. Hastings, he had con-

sidered that allegation as a charge; for he says, "With respect to the malicious charge of murder, I solemnly declare I had no hand whatsoever in the condemnation and execution of Nunducumar." He concluded by saying, that should it fall to his lot in a subsequent part of the trial to mention that transaction, he should use words to the same effect as Mr. Burke had done.

Mr. Wyndham said a few words in support of the Managers.

Mr. Pitt disregarded insinuations thrown out against him; he and his friends should be watchful over the conduct of the Managers, and take care they transgressed not the directions of the Commons.

Mr. Fox with much warmth contended, that no tyrant ever behaved in a more barbarous manner over those whom he governed, nor with more duplicity and treachery. He would maintain that the privileges of the Commons were never more invaded, nor endangered within this century, nay he would say within the last, than they had been within these few days.

The Marquis of Graham was led to say more than he wished; he had hoped the motion would have met with no opposition. The case he thought was now materially altered: he therefore should move that the subsequent words do follow the original motion: That the words spoken by Mr. Burke, "he (meaning Mr. Hastings) murdered him (meaning Nunducumar) by the hands of Sir Elijah Impey," ought not to have been spoken.

Colonel Phipps seconded it. He thought the conduct of the Managers unjust and absurd.

The amendment and the original motion were now read.

Mr. Fox wished to know if the Honourable Gentleman who spoke last meant to give the sense of the House—if he did, and the House thought the conduct of the Managers unjust and absurd, why not remove them? It was a reflection on the House, to continue in those offices men who were disqualified by injustice and absurdity. He moved that the following do follow the former amendment: "Notwithstanding on a former year, no notice was taken of the words spoken by another Manager to the same effect; and that Mr. Hastings, in his defence, had considered them as a charge, answering in the following manner:—'With respect to the murder of Nunducumar, I solemnly deny having any concern in it whatever.'

Mr. Fox reprobated the conduct of the Gentlemen who had set their faces against the Managers. He said, that the House had

voted

voted for the impeachment; they had appointed the Managers to conduct it; but, from the motion of the noble Marquis, it seemed that they had appointed them merely for the purpose of abusing them. The noble Lord had wished to censure the Managers; but as he had done so in a *courteously* style, he thought the censure was admissible: for his part, he saw plainly that it was the intention of the Marquis, as well as his friends, to slur the prosecution—in plain words, they had acted *meanly* in wishing to convey sentiments which they were *afraid* or ashamed to avow.

Colonel Phipps rose to order; he said the Right Hon. Gentleman had uttered words which were not only indecent, but such as were unfit for such an assembly, and would not be tolerated in any other place.

Mr. M. A. Taylor replied, that the Hon. Gentleman who had spoke last, was guilty of a breach of order in the first instance, in calling his Hon. Friend to order, when nothing occurred to excuse his conduct, and that the words with which he concluded his speech were much more disorderly than those to which he had very improperly objected.

Mr. Francis, looking steadfastly at the Speaker, told him, that a very unwarrantable *menace* had been offered to a Right Hon.

Member, and that *he* (the Speaker) had heard it.

Mr. Fox having made a very pointed and severe observation on the conduct of Col. Phipps, the strangers were ordered to withdraw;—in about an hour after, the gallery was opened for the admission of strangers.

Mr. Pitt at our entrance was on his legs, recapitulating many of those arguments which had been used before; and was very fully answered by Mr. Fox. The House having grown clamorous in calling for the question, the amendment of Mr. Fox was negatived without a division.

The question was then put on the original motion.

Ayes	135
Noes	66

Majority	69
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The whole motion, as amended by Lord Graham, was then carried without a division.

Mr. Bouverie next moved a vote of thanks to the Managers, for their services in the public cause.

This motion was resisted as premature; a direct negative was not put upon it, but it was disposed of by the previous question.

THIRTY-NINTH DAY.

TUESDAY, MAY 5.

The prisoner having been brought to the Bar, and the Serjeant at Arms having, by the usual proclamation, called upon the Commons to make good their charges against Warren Hastings.

Mr. Burke rose, and said, that in obedience to their Lordships proclamation, he would proceed to make good the charges brought against the prisoner at the Bar by the Commons of Great Britain in Parliament assembled. But before he should enter into the proofs of those charges, he begged leave to inform their Lordships, that since he had last had the honour of addressing them, an event had taken place, upon which it was extremely difficult for him to speak, but which, at the same time it was impossible for him to pass over unnoticed. At the last sitting of the Court he had stated to their Lordships, in the course of his speech, that the prisoner had murdered Nundcomar by the hands of Sir Elijah Impey. But this position he was no longer at liberty to support, for in what he had said upon it, he was disavowed and disowned by his princi-

pals—the House of Commons. Their Lordships were not therefore to expect that he would attempt to support by evidence an assertion, which, however it might appear to himself to be well founded, was discountenanced by those who had ordered the prosecution, and had commissioned him to conduct it. It was the province of the House to command those who acted under its authority, and it was his duty to obey.

But at the same time that he professed his readiness to obey the commands of his principals, their Lordships, he hoped, would suffer him to say a word or two by way of apology for that part of his conduct which brought upon him the censure of those whose approbation it would be his ambition to obtain, and his study to deserve. When he said that Nundcomar had been murdered by Mr. Hastings, he never could have meant to accuse the prisoner of the specific crime which the *law* called murder. He was a little too well acquainted with the laws of his country to entertain an idea, that murder was a crime which was to be tried by *impeachment*. What he meant, therefore, by the word *murder*, in the sense

sense in which he had used it, was not the crime which the *law* distinguishes by that name, but a crime which in reason and common sense must be considered of at least as great atrocity.

From all that he had learned by nine years enquiry into the administration of justice in Bengal, he had been so clearly convinced in his own mind that Nundcomar had been taken off solely for the purpose of throwing a discredit upon the charges brought by that unfortunate person against Mr. Hastings, that as long as he should speak his own *private* opinion, he would not hesitate to say, that Nundcomar had been murdered by Mr. Hastings. So deeply was this conviction rooted in his heart, after nine years enquiry and deliberation upon that subject, that it would be torn from him only with his life. And therefore, though he was willing to admit that the word *murder* applied to the case of Nundcomar, did not convey the idea that he had conceived of that fatal event, still he maintained, that as the poverty of our language did not afford any other word, more particularly descriptive of the crime which he thought might fairly be brought home to the prisoner, he had been reduced to the necessity of calling it a murder. If he could discover any other word that would more forcibly convey his idea of the atrocity of the prisoner's guilt, he never would have used the word *murder*—he had been driven to it only by his not having been able to find a *worse*.

His private opinion, however, was not to stand in competition with the opinion of the House of Commons, but to give way to it. It was not for him to consider how the Commons could have learnt in some few days that the result of nine years labour bestowed by him upon this subject, did not furnish a ground for charging Mr. Hastings with having conspired against the life of Nundcomar, as the only way to destroy the accusation brought by that unfortunate man against Mr. Hastings.—It sufficed that the House of Commons had declared its opinion on that subject; which opinion should be a law to him. And therefore he would not in the course of the trial say one word about the conviction and execution of Nundcomar, let them be urged over so forcibly by the Prisoner against the credit of that person, unless the

Commons should give him fresh instructions on that head.

Indeed it never was his intention to offer any proof to their Lordships respecting the circumstances of the condemnation and execution of Nundcomar, except with a view to rebut the discredit which Mr. Hastings might be advised to endeavour to throw upon the accusation brought against him by Nundcomar, by shewing that this man had afterwards been condemned and executed for forgery.

That Mr. Hastings entertained an idea of discrediting the accusation of Nundcomar by such means, appeared from his own defence at the bar of the House of Commons, where he actually declared it. It was very natural therefore for him who was to manage the impeachment, to support the credit of Nundcomar, whose testimony was one of the chief supports of the present article of charge relating to presents.

However, as the Commons had been pleased to censure him for having mentioned the death of Nundcomar as a charge against Mr. Hastings, he would not attempt in the course of the trial to shew that Mr. Hastings had any hand in that death. He would leave it to be supposed that an execution, which at least for that time put an end to a charge then pending against Mr. Hastings, and which was consequently a most useful event to him, had been effected by a fortuitous coincidence of circumstances, in which Mr. Hastings had no concern, but from which, happening so very opportunely, he derived the greatest advantage.

He would suppose even that it was one of those strokes of Providence, which, as Mr. Hastings himself said in his defence, the people of India superstitiously imagined always watched over his person, and conducted all his measures to their destined end: he was willing to suppose that this Providence had cut off Nundcomar just at the moment when his death could be most serviceable to Mr. Hastings.

Having made these preliminary observations, Mr. Burke read the resolution which was passed the preceding night by the House of Commons*. From this resolution, he said, it appeared that he was restrained only from defending the credit of Nundcomar by proving that he was taken off by Mr. Hastings.—But he was not restrained from defending the cre-

credit of Nundcomar by any other way. Thus, though he was not left at liberty to prove that a Prince Minister of a great kingdom, who had under his sole management a revenue of 1,500,000l. a year, and who had been tried for a paltry forgery, supposed to have been committed eleven years before his trial, and under the authority of an English Act of Parliament passed after the pretended commission of the crime, was prosecuted, not with a view to satisfy public justice, but to stop the course of it; still he was at liberty to repel the attacks made by Mr. Hastings on the character of Nundcomar, by charging him with other forgeries, which had no connexion with the pretended crime for which he suffered death.

It was a maxim received in some of the revolutions of philosophy, that when a limb was cut off from the human body, the strength of the others were proportionably increased. And therefore, said Mr. Burke, this one limb of your cause being cut off, the others will be proportionably strengthened; and we shall proceed, even in our maimed state, with more vigour and energy than we displayed before.

He then begged their Lordships would not impute to the House of Commons, or to their cause, any part of that weakness which belonged solely to him, their agent. Whatever was energetic, right, and regular, should be imputed to the Commons; what was feeble, wrong, or irregular, should be laid exclusively at his door. The Commons, in censuring him, did not mean to throw the least damp upon the impeachment; for though they had censured and disavowed him, they had again sent him to prosecute the same impeachment with the same colleagues against the same defendant, and at the same bar at which he had originally opened it. They had raised a theatre to justice, on which the eyes of all the world were fixed, and in which the honour of the Commons and of the British name were deeply concerned. It was for the Commons who had brought the prosecution, because they were convinced of the Prisoner's guilt, to speak with confidence of it; but it was the province of their Lordships to believe nothing advanced by them, that should not be made out in proof.

Having stated this, he observed that

Mr. Hastings had, in his defence at the bar of the House of Commons, charged Nundcomar with having forged two letters, one from MUNNY BEGUM, the other from the Nabob Yetram ul Dowlah. But it to happened that Mr. Hastings defeated those charges at the very moment he brought them.—For he shewed that the pretended forgery of a letter from Munny Begum was supported only by his own testimony.—“I have since been informed, says he, that she (Munny Begum) was totally unacquainted with the use that had been made of her name, till I informed her of it.”—This assertion, Mr. Burke said, rested solely upon the authority of Mr. Hastings himself, unsupported by any one witness.—It was true, indeed, he referred to a witness; for he said in his defence—“Mr. Middleton, whom she consulted on the occasion, can attest the truth of this story.”—But Mr. Hastings ran no risk in referring to Mr. Middleton, who could not contradict him—and for the very best reason, because that Mr. Middleton is dead.

The other charge respecting the forgery of a letter in the name of the Nabob YETRAM UL DOWLAH, was still more extraordinary; for though Mr. Hastings did not hesitate to call it a forgery, he admitted that he knew nothing of the matter, as appeared from his defence, where he says—“I have not yet had the curiosity to enquire of the Nabob Yetram ul Dowlah, whether his letter was of the same stamp; but I cannot doubt of it.”

Mr. Burke adverted next to the presents and bribes taken by Mr. Hastings. To prove that to take presents in any shape, or on any account, was made penal in every servant of the East-India Company, he read the Act of Parliament, by which the penalty was imposed; and he quoted a minute, written by Mr. Hastings himself, in which, speaking of the bounty offered by Sujah ul Dowlah to the Company's troops that had assisted him in the extermination of the Rohillas, he declared that the *unlucky* discovery of this Act of Parliament convinced him, that the troops could not accept of this bounty; he said he would be glad to lay aside the Act, but it was irresistible.

Mr. Burke remarked, that if troops could not accept of a bounty from a Prince,

Prince, who by their bravery and blood had acquired millions, *à fortiori*, the Company's civil servants were precluded from taking presents.

But Mr. Hastings, it seemed, had made presents and bribes a source of revenue, and had received them for the benefit of the Company. But this, exclusive of the shameful idea of making up an *exchequer of bribes*, was a weak pretence; for it was a maxim in law, that when a man pays a sum of money, and gets no consideration for it, he can recover it by action. Thus Mr. Hastings could be sued by any individual for a sum *so* paid to him; and if it had found its way into the Company's Treasury, Mr. Hastings, after having been compelled to refund to the original donor, could recover of the Company all the monies that had been so lodged in their Treasury. Of this the Court of Directors were aware; for they sent out orders to the prisoner to receive no private sum on their account; and they bound themselves to repay any that had been so received.

Mr. Burke took infinite pains to pursue through all their mazes what he called the arts of the prisoner to conceal the sums he had privately received, and to disguise them under false accounts. We cannot pretend to follow him through all his statements, interspersed with various references to letters written by the prisoner on the same accounts, and all contradictory. He instanced the accounts of *three* lacks of rupees, which were described in one account as the joint property of the Company and the prisoner, *two* belonging to the former, and *one* to the latter. In another account the three lacks were described as the *sole* property of the Company;—and in a third account as the *exclusive* property of Mr. Hastings. Now it was pretty remarkable, that though at first the Company was represented as the owner of two-thirds of this sum, Mr. Hastings took the Company's bonds for the whole.—And though in the third account he stated the money to be his own, he said he afterwards indorsed the bonds to the Company, meaning thereby to declare that they did not belong to him. These different prevaricating accounts proved, he said, that the views of Mr. Hastings in taking the money originally were corrupt.

Mr. Burke touched next upon the

bribe of three lacks received by Mr. Hastings from RAJAH NOBEKISSEN. The Prisoner's own account of the transaction was as follows:—"In the year 1783, when I was actually in want of a sum of money for my private expences, owing to the Company not having at that time sufficient cash in their Treasury to pay my salary, I borrowed three lacks of rupees of RAJAH NOBEKISSEN, an inhabitant of Calcutta, whom I desired to call upon me with a bond properly filled up: he did so; but at the time I was going to execute it, he *entreated* I would rather accept the money than execute the bond. I neither accepted the offer nor refused it, and my determination upon it remained suspended between the alternative of keeping the money as a loan to be repaid, and of taking it and applying it, as I had done other sums, to the Company's use. And there the matter rested till I undertook my journey to Lucknow, when I determined to accept the money to the Company's use," &c.

Mr. Burke said, that the observation which was applied to the fair sex, "That the woman who deliberates is undone,"—might be applied to a person to whom a bribe is offered; for whoever deliberates about taking is sure to take it in the end, as was the case with Mr. Hastings. The generosity of the noble-minded Rajah Nobekissen overcame him. This Nobekissen was a Banyan; and if there was any thing more flinty, more gripping, more thrifty, or more careful to improve the value of money than a Jew, it was a *Gentoo Banyan*, or Money Broker. And yet such a man refused a bond for his money, and *entreated* it might be taken as a present. Their Lordships would of course expect, after such a transaction, to hear of this Nobekissen again; and so they would, for he had been appointed to the collection of the revenue of a large district, and was behind-hand in his payments to the Company, in at least as large a sum as was that which, no doubt for corrupt purposes, he had given to the prisoner.

Mr. Burke next adverted to the present of 100,000l. received by the Prisoner from the Nabob of Oude, which he discovered, because, as he had said himself, it was of a magnitude not to be concealed, and which he desired the

Company would give to him as a reward for his services, or, as he should have said, for his false, fraudulent, covenant, and prevaricating accounts.

The last thing on which Mr. Burke touched was the letter written by Mr. Hastings from Cheltenham to the Court of Directors, in which he endeavoured to avoid giving the account which they pressed him to give, of all the sums privately received by him for their use, together with the names of the persons from whom he received them. This letter Mr. Burke described as *sui generis*, as *unique* in its kind, and not to be paralleled in the annals of mankind.

At 20 minutes past four o'clock, Mr. Burke said he would not detain their Lordships any longer that day: There remained, he said, very little more for him to say in the opening of this charge; and he assured them he should be able to say it in a very short space of time the next day of meeting; and then he said he would proceed to give in evidence, irrefragable proofs of all that he had alleged at his opening.

Mr. Burke then sat down, and their Lordships adjourned from the Hall to the Upper House of Parliament.

FORTIETH DAY.

THURSDAY, May 7.

Mr. Burke resumed the subject of the bribes taken by Mr. Hastings. Some of these, he said, were, according to the Prisoner's own words, "of a magnitude that could not be concealed;" and therefore as he knew that some account of them would reach the ears of the Directors, he thought he would have some merit to plead to the Court, by making the discovery himself. But he resolved at the same time to make it in such a way as would, in his opinion, baffle all enquiry, and ultimately conceal what it appeared to be the object of the discovery to reveal.

Accordingly, the account he gave of the presents was so obscure, that the Court of Directors could not see their way through it—if Mr. Hastings ever gave any explanation, it was to puzzle the first account, and to add obscurity to that which had but too much before.

His memory being weak, he was reduced to the necessity of *guessing* what might have been his motives for concealing at first the receipt of the sums in question, and for making the Com-

pany *debtor* to him for its own money—and after having substituted *guesses* in the room of accounts, he confessed, in his famous letter from Cheltenham, that he was not sure that the motives which he *guessed* had influenced him were those by which he had actually been influenced.

Mr. Burke said, that when a mystery was thrown over accounts, to conceal from those who ought to inspect them, he suspected that it was used for the sole purpose of covering a fraud.—He admitted that there might be occasions when the accounts of a nation might with propriety be kept from the eyes even of persons filling considerable offices under Government; but there could not occur any one case in which it would be proper to keep accounts from the knowledge of those who were at the head of the executive government. And therefore he presumed that Mr. Hastings was conscious of guilt, when he withheld from the Court of Directors the account of the receipt and expenditure of money which belonged to the Company, and which it was their department to direct and controul. Mr. Hastings might be said to withhold the accounts in question from the knowledge of the Directors, when he gave them only such accounts as they could not understand, and when he explained them only in such a manner as to render them, if possible, still more obscure.

Concealment seemed to be the wish of his heart: when he was called upon in India by the Court of Directors to give those accounts, his answer was, that he would give them satisfactorily on his return to England. But when he did return, and the Directors again pressed for the accounts, he referred them to India, where, he said, were the only accounts of the presents that were in existence: to his own *memory* he could not trust one moment; but he believed Mr. Larkins, the Company's Accountant-General, was possessed of all the particulars relating to those presents. Thus did Mr. Hastings always set *one half of the Globe* between the questions put to him and his answers. For when he was in India, he always said that it was in England he could satisfy the wishes of the Directors; but when in England, he said it was only in India they could procure the accounts they were so anxious to obtain.

The Directors having been thus referred to Mr. Larkins, sent him orders to transmit to them particular accounts of all the sums of money privately received by Mr. Hastings for the use of the Company, and paid into the hands of Mr. Larkins.

The answer of Mr. Larkins was to have dispelled the mystery which hung upon this business; but unfortunately it left it involved in its original obscurity; for it was nothing less than satisfactory.—The account contained in this answer might be called *Geographical and Chronological*, but by no means *satisfactory*. It stated the *places* where the money was paid, and the *times* when it was received, but said not a syllable about the *persons* by whom it was given, or the *purpose* for which it was advanced.

Some things, however, were to be found in this answer, which would lead their Lordships to presume, that the account given by Mr. Larkins, though it could not be thought to contain *all* that Mr. Larkins knew of the matter, was very far from being a *full* account of *all* the bribes and presents received by Mr. Hastings. Some part of the account transmitted by Mr. Larkins, was stated by that gentleman to have been read to him out of a Persian paper, by a Persian Agent of Mr. Hastings; but it did not state that the sum mentioned in the part of the paper so read, was the *only* one of which that paper contained an account.

It was evident also, from the account sent over by Mr. Larkins, that Mr. Hastings had *not* a Superintendent *General* of *bribes*, to whom all the inferior agents, employed in this business, gave particular accounts of the sums raised by them for the use of Mr. Hastings, or, to adopt his own idea, for the *Company*. Mr. Hastings was too careful to trust too much to *one* man; he had agents of every country, complexion and religion; but no two of them were acquainted with the business which their principal was carrying on: each thought himself the only one trusted in money matters, though the number actually trusted was very considerable.

It appeared also, from the account made up by Mr. Larkins, that if it had not been for him, who had reminded Mr. Hastings, that he had promised to send home some accounts to the Court of Directors, even some of the memo-

randums out of which Mr. Larkins formed a part of his answer, would never have been collected from some of the Prisoner's Black agents.

Their Lordships might well be surprised that Mr. Larkins, into whose hands, as the Company's Accountant-General, Mr. Hastings *boasted* he had paid many of the sums received by him for the Company's use, should have made no observation upon the very singular conduct of the Prisoner, who paying into the Company's Treasury the Company's own money as he called it, took bonds for that very money payable to himself; thus making the Company *his debtor* for their *own money*.

There was one circumstance more to be found in Mr. Larkins' account, which must convince their Lordships, that the system of bribery was carried on in a manner which shewed that it would be an Herculean task to destroy it.—Mr. Larkins said, that if he himself had been suspected of *perjury*, he would not have made out the account; and even in that case he would not have done it, if he had not had the permission of Mr. Hastings to reveal what he knew of the business.

Such was the bond of union by which all those were engaged to each other, who had any share in the business of bribes and speculation, that the sense even of public duty could not shake it: and even the Company's Accountant-General would not transmit to his masters their own accounts, if he had not first obtained the leave of Mr. Hastings to obey the lawful orders of his superiors. Thus did these gentlemen couple a nice sense of honour with infamous speculation, private fidelity with public treachery, and patriotism with measures which tended to destroy the character and honour of their country.

Mr. Burke entered into a minute detail of the peculations in Dacca, from whose Rajah 30,000l. had been extorted. He touched upon the bribes received by Gunga Govin Sing, and by Mr. Hastings's black agent Canto Baboo. The former was by contract to have raised a large sum in another district, but did not pay above one-half of it: so that between two different agents, who were to have raised 90,000l. only 55,000l. were acknowledged to be paid into the Company's Treasury. The remaining 40,000l. either found its way into the pocket of Mr. Hastings, or into those of his agents.

He next remarked upon the conduct of Mr. Hastings, who had complained to the House of Commons that the enormities committed by Devy Sing, had been ascribed* to him. But notwithstanding the complaints of the Prisoner, the guilt imputed to him in those transactions should be brought home to him. And this led him to speak of the written testimonies to his character procured lately from India by the Prisoner. One of them was from the Rajah of Dinachpore, who bestowed the highest encomiums on Mr. Hastings, and bore testimony to his honourable, just, and equitable conduct towards the said Rajah, during his administration in India.

Mr. Burke begged their Lordships would give him leave to state briefly the history of that Rajah.—This noble person was the son of the late Rajah of Dinachpore, who having no *legitimate* male issue, and being on bad terms with his brother, adopted his *natural* son, to exclude the brother from the succession. This son, at the death of his father, was scarcely *six years* old. It was not clear, that by the Gentoo laws the deceased Rajah could have adopted this child, whilst he himself had living a legitimate brother. However, the adoption was confirmed by the English government, and Gunga Govin Sing was appointed to administer the Zemindary during the noble youth's minority. Under this Minister, all the friends and relations of the young Rajah were removed from about his person, and the infamous monster Devy Sing was thought a proper instrument to be appointed by Gunga Govin Sing, the friend or creature of Mr. Hastings, Governor to the young Lord, and to be entrusted with his education. It was then, and in the country of his pupil, that Devy Sing did those acts of barbarity, which should be given in evidence to their Lordships. The Rajah himself was plundered of upwards of 30,000*l.* and yet it was from a person so treated that Mr. Hastings had lately procured an honourable testimony of his character*.

But so far were the Managers from

being alarmed by this testimony, that they would themselves produce it in evidence. The Rajah, as Mr. Burke had said before, was scarcely *six years* old when he succeeded to the Zemindary; and he was little more than *eleven* when Mr. Hastings left Bengal. Thus it was from a boy that this testimony was procured, which related to the measures of government that took place whilst he was a *child*.

The other honourable testimony in favour of Mr. Hastings, was from a person who, it should be made appear to their Lordships, had been *robbed of one lakh and a half of rupees*.

But though these testimonials had been obtained from persons who could not be proved to have been plundered, still little dependence could be had upon testimonies procured from natives of India, who did not dare to *think* differently from their tyrannic rulers.

This was vouched by Sir Elijah himself, who, in one of his letters, which should be laid before their Lordships, said that no attention ought to be paid to the letters or petitions or addresses of the *natives* of India in favour of their rulers.—“Addresses,” said the letter, “are procured in *England* through *influence*—in *India* through *force*.”

Having finished all his remarks upon the different heads of the charge, Mr. Burke concluded with a handsome address to the Court.

“My Lords, said he, this prosecution is not brought merely for the purpose of bringing down punishment upon Warren Hastings, and preventing future peculations in India: it ought to be considered as a great *criminal* prosecution, instituted for the purpose of guarding Great Britain from the vices of Asia. The people of this country have often been represented as unsocial, cold, phlegmatic, and distant: but their greatest enemies have always admitted that they were *open, honest, candid and ingenuous*. But should the subjects of Great Britain who serve in India be suffered to pursue any longer the maxims of Asia, they will bring home her *vices* as well as

* Here Mr. Burke dilated exceedingly—his intention was only to “open a package of guilt against the culprit, in order that it might get air, be ventilated, and perform quarantine.”

“Mr. Hastings would call upon the mountains to cover him. A Court of Justice was an element in which he could not live, and his only sanctuary was to appease the perseverance of his persecutors.”

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"her *wealth*, and *both* will over-run the land. Those vices, if they are suffered to spread, will destroy the genius and character of the people, who will become like the Asiatics, reserved, dissembling, plotting, treacherous and perfidious.

"But, my Lords, it is not for our manners only or our morals that we have to fear, but also for our *liberty*.

"If the *vices* of the East would corrupt the former, its *wealth* would utterly destroy the latter. An intelligent Poet hath said—

—*Opum metuenda potestas.*

"From the wealth of Asia our *liberty* may apprehend its ruin—a deluge of Asiatic spoilers and delinquents may pour into the Senate, and corrupt the sources of our Constitution. To-day the Commons are prosecuting Asiatic delinquents—to-morrow those delinquents may be the Commons. Do you, my Lords, stand forward the defenders of our Constitution, and let the LIBERTY of the COMMONS be preserved by the JUSTICE of the LORDS."

Here Mr. Burke concluded*.

The Managers, then withdrew to consult about the mode of proceeding.—They returned in a few minutes, and Mr. Adam said that the Managers had to propose two things to their Lordships' consideration, with the adoption of either of which the Commons would be satisfied. The Right Hon. Manager who had just concluded, had opened the charge generally, and it was in-

tended that another Hon. Manager should enter more minutely into some parts respecting the concealed bribes, upon which the Right Hon. Manager had touched but slightly. Now what he had to propose was, either that the Manager to whom he alluded should begin *then*, or else that the Managers should produce their evidence as far as it related to the sums received by Mr. Hastings from Munny Begum, and from the others mentioned in the charge brought by Nundcomar; and that the Hon. Manager should afterwards proceed to open the detail of the other bribes.

The Lord Chancellor said it was a mere point of order, which he would leave intirely to the discretion of the Managers.

They agreed after some conversation, to produce their evidence.

Mr. Grey then said, that the Commons would shew that there did exist such abuses in India, with respect to the taking of presents, that the Court of Directors were obliged to send out instructions on that head, strictly forbidding all their servants to take presents under any pretext. These instructions were produced and read.

A letter or minute was also read, which was written by Lord Clive, in which he proposed, that a certain allowance should be allotted in future to every President or Governor of Bengal, in lieu of the emoluments that he might expect to make by trade, from which he was to be precluded, and in lieu of

* Mr. Burke read from the Reports of the East India Select Committee, a letter of Mr. Hastings; and in complimenting the energy and elegance of the composition, allowed Mr. Hastings the merit *ad conciliandum benevolentiam auditorum*.

The manner in which Mr. Hastings had recorded the sums received, was next censured; he had exhibited accounts in all colours—black, white, and mezzotinto,* in all languages—Gouto, Persian, and English:—yet, by simple rules of comprehension, they could not be understood. One Hundred Thousand Pounds had been received by Mr. Hastings as a bribe, which he professed not to recollect; and declared he had not a rag of paper as a voucher to shew for it.—*Poets, Politicians, and Painters*, were licensed to deal in fiction; but accountants could not, with rules of arithmetic before them, remain in error.

Mrs. Hastings, it appeared, had received the sum of Ten Thousand Pounds, as a *gratuity* or *compliment*, which had been applied by Mr. Hastings to the India Company. The acceptance of money by a Governor's wife was, by Act of Parliament, expressly forbidden; and wisely, the Romans, aware of the abuses that would ensue, if the wives of Governors were permitted to receive bribes, did not suffer them to accompany their husbands to their Governments. This determination was not made when the Romans were most distinguished for virtue and patriotism, but at a period best calculated to correct immorality and corruption.

Three provinces in India had yielded to the extortion of Mr. Hastings; and *Sixty-eight Divisions* of the English territory had escaped his rapacity; but *ex pede Herculem*; it was easy to trace, had not justice intervened, that he would have effected his purpose in every Province.

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resents, which he was not, under any pretence, to receive. An OATH was also framed by Lord Clive, by which the Governor was to bind himself not to take a present of any kind, or suffer it to be taken for him. And to set all future Governors an example, Lord Clive, who framed the oath, voluntarily took it himself at the Council Board. It appeared also, that Governor Verelst and Governor Cartier took the same oath; or, as it is called in the minute, "*the oath of office*."—But it was proved by Mr. Hudson, one of the Clerks from the India House, that he could not discover, from the Company's records, that Mr. Hastings had taken this oath.

The Managers next produced *bonds* signed by Mr. Hastings, in which he covenanted *not* to accept of any present whatever.

They produced afterwards a letter from the Court of Directors to the President and Council of Bengal, in which they complained that the more pains they had taken to prevent the receipt of presents, the more they found that presents were received. They then communicated their intention to apply to Parliament for their aid to suppress this evil.

And lastly, the Managers referred to the regulating Act of 1774, which contains a positive and peremptory provision on the article of presents, which were forbid under penalties.

Mr. Grey was going to produce a minute written by Mr. Hastings, to shew in how *frivolous* a sense that gentleman himself understood that provision of the Act, but was stopped by the Lord Chancellor, who finding that it was *five* o'clock, thought it was time for the House to adjourn. A motion of adjournment was accordingly made, and their Lordships immediately adjourned to their own House.

FORTY-FIRST DAY.

Mr. Grey begged leave to inform their Lordships, that before he should resume the evidence, where it broke off on Thursday last, he wished to fill a chasm that had been left in a part of the evidence on that day: this he intended to do by laying before their Lordships a *copy* of a letter written by the prisoner to the Court of Directors, in which he admitted that the

salary, and other allowances settled upon the Governor-General on the recommendation of Lord Clive, were sufficient to enable him not only to maintain the dignity of his situation, but also to save in *very few* years, as much money as would make his circumstances perfectly easy and comfortable for the rest of his life.

Mr. Law, Counsel for Mr. Hastings, desired that the *original* letter, and not a *copy* of it might be given in evidence.

Mr. Grey said he feared this could not be done—for after the most diligent search, the Managers had not been able to find the *original*. A copy of it, however, was in the Report of the Secret Committee of the House of Commons, who must have seen the original; for it could not be supposed that they would fabricate a letter.

Mr. Law objected to the production of any *report* of the House of Commons.

Mr. Grey stated, that he could prove that the letter of which he wanted to produce the copy, had really existed, but that it could not now be found. He was ready to admit at the same time, that he was not able to prove that the copy which he was about to offer, had actually been compared with the original: but a case had been just put into his hand, from which it appeared that a copy of a deed had been admitted as evidence, tho' the person who produced it declared he could not swear that he had ever compared it with the original. It was a case in ejectment, in which there was a question of a deed, which was proved to have been destroyed by a fire; a witness swore that he had made from the original the copy which was produced in Court, but he could not say that it was a *collated* copy: however, he had always kept it by him as a true copy. In the present case, Mr. Grey thought that if he should prove that the original letter to which he alluded, was no where to be found, but that it *had* existed, their Lordships would suffer him to give the copy of it in evidence.

Mr. Grey then called Mr. Hudson, one of the clerks of the India House, who proved that he had searched very diligently in the Company's records for the *original* letter mentioned by the Hon. Manager, but without having been able to find it.—He said, however, that it was a custom at the India House to keep a book of *abstracts* of letters, containing the dates of all let-
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ters received from India, together with the name of the writer, &c. &c.—In this book he found the letter in question mentioned, but he was not able to find the original.

Mr. Law asked, if the book of abstracts was written by the witness.—Mr. Hudson answered in the negative: he said it had been written by another clerk now at the India House.

Mr. Law said, that the clerk to whom the witness alluded was the proper person to prove the book of abstracts.

The Managers were going to read in evidence the copy, from the Report of the Committee of Secrecy of the House of Commons. But

Mr. Law interrupted them, and said, that before they entitled themselves to read it, they must first prove that it was a true copy, and consequently that it had had really an original.

Mr. Burke said, that the Managers would postpone the proof of the original for the present; and that they had hopes that they should be able to establish it another time. Therefore he would say no more at this moment on that subject, than, barely to observe, that, as the Committee of Secrecy, commonly known by the name of Mr. Dundas's Committee, in whose Report this copy appeared, had constantly sat at the India House, there was no doubt but they had found the original among the Company's records, and this might be urged as a proof, that the copy taken by that Committee was a true and faithful one. But he would waive the further discussion of this point for the present.

The Managers then proved, from a minute recorded in Council by Mr. Hastings, that the Act of Parliament made for the purpose, among other things, of preventing the receipt of presents, appeared to Mr. Hastings himself so clear and so positive on that point, that it would not admit of any possible construction that would countenance an evasion of it.

The Managers next proved from the Company's records, that MUNNY BEGUM had been a DANCING GIRL: That it was much against the will of the present Nabob of Bengal, her stepson, that she had been placed at the head of the government; and that he did not acquiesce in the appointment

PART II.

until he had had a personal interview with Mr. Hastings, upon whom he endeavoured to prevail, but without success, not to countenance the appointment of MUNNY BEGUM.

The Managers then shewed, that the superintendence of the young Nabob's education, and the direction of the *Zenana* or palace, belonged of right to his own mother. They said, that for the purpose of concealing from the Court of Directors this injury done to the Nabob's own mother, Mr. Hastings had always spoken of MUNNY BEGUM as if she was the mother and the mother-in-law of the young Prince. They called Mr. Hudson again, who proved that he had carefully examined all the Bengal correspondence of the period to which the Hon. Manager alluded, but had not been able to find one word in any of Mr. Hastings's letters, that conveyed the most distant idea that the present Nabob of Bengal had any other mother than MUNNY BEGUM.

The Managers then proved that the excuses or pretences by which the prisoner had endeavoured to render the appointment of MUNNY BEGUM not unacceptable to the Court of Directors, were all founded in falsehood.

One of these pretences was, that she was to have nothing more than the superintendence of the Nabob's education and the management of the palace, beyond the walls of which he said her authority was not to extend.

But it was proved by letters written by the PRISONER to MUNNY BEGUM, that she was to appoint Officers to all the different departments of the State, who were to render her an account of their administration.

Another pretence was, that the appointment of Munny Begum would be attended with a saving of three lacks to the Company. This appeared also to be a groundless pretence; for Mr. Hastings expended the whole of these three lacks in salaries given to the creatures and favourites of MUNNY BEGUM, one of whom was RAJAH GOURDASS, son to the famous NUNCOMAR.

From these, and a variety of other circumstances, it was to be presumed, that, in placing a WOMAN, and SUCH a woman, at the head of the Nabob's government, instead of an able, honest, and intelligent MAN, such as he was bound

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bound to select, by the orders of the Court of Directors, Mr. Hastings acted from *corrupt, interested, and selfish motives*.

The Nabob YETRAM UL DOWLAH, uncle to the reigning Nabob of Bengal, had solicited Mr. Hastings, as appeared from the evidence, to place him at the head of the administration, and not a woman.

Mr. Hastings refused to grant his request, and assigned to the Court of Directors this reason for his refusal, that YETRAM UL DOWLAH was a person whom it would be dangerous, to trust with power.

To repel this objection made by Mr. Hastings, the Managers caused a letter to be read, in which Mr. Hastings, speaking to the Court of Directors of this same YETRAM UL DOWLAH, said, he was a person who had not abilities to render himself formidable, had no dangerous ambition, and who, if he had, could not, in the fallen state of the Nabob and his family, be an object of apprehension to the Company.

The Managers proceeded next to give in evidence certain orders transmitted by the Court of Directors to Mr. Hastings, that he would cause regular accounts to be kept, and delivered annually to the Board, of the expenditure of the Nabob's allowance, to the end it might appear, that it was not squandered or improperly bestowed.

Mr. Law said, there was no charge against Mr. Hastings in the article of impeachment then under consideration, for *breach of orders*; and therefore he did not see why those orders from the Court of Directors should be given in evidence.

Mr. Burke and Mr. Grey combated by turns this objection. The substance of their argument was, that they did not produce the orders for the purpose of proving that he was guilty of a crime by not obeying them; that would be a distinct crime and a distinct charge; but the object for which they wanted to produce those orders was to shew, that the prisoner's disobedience was the *effect* of the precise crime with which he was *specifically* charged in the article then under their Lordships' consideration, viz. *corruption*.—He had taken bribes from Munny Begum, and others about the Nabob's Court; and had the accounts, as ordered by the Court of

Directors, been regularly kept, the mismanagement and squandering of the Nabob's income must have appeared. It was therefore for the purpose of concealing the frauds, which would otherwise have been laid open to the Directors, that Mr. Hastings had disobeyed their orders. It was with a view to fix this *presumption* of guilt on the prisoner, and not merely the crime of disobedience, that the Managers wished to lay those orders before their Lordships.

Mr. Law said, that he would waive his objection to the production of those orders, provided that if after the evidence should have been taken down, the Hon. Managers should not be able to shew the relevancy of it, their Lordships would expunge it from their minutes, and from their memory.

After this the orders were read; and Mr. Hudson from the India House proved that no such accounts as had been directed by those orders had ever been transmitted to the Court of Directors.

The Managers, after this, gave in evidence a transaction, the tendency of which was to shew that the prisoner had suffered *false accounts* of other matters to be given to the Directors.

It appeared that in the year 1771 it was resolved, that on account of the non-age of the Nabob, who was then a child, his allowance should be reduced from about 32 lacks of rupees to about 15 lacks, until he should come of age.

This reduction was to take place from the 22d of January 1772. But when the general accounts of the sums paid to the Nabob were afterwards laid before the Board, the full allowance of 32 lacks was *stated* to have been paid to the Nabob up to the month of December 1772, tho' in point of fact, the Prince had received only the reduced allowance from the preceding January.

This mistake appeared to have struck Mr. Hastings himself, who desired the account might be referred back to Mr. Crofts, the then Accountant General, to be revised by him.

The way the matter was then settled was this—it was admitted that the full allowance had not been paid as such to the Nabob from January 1772, but that the overplus of the reduced allowance, consisting of fifteen lacks, had been

been paid to him towards the discharge of an arrear of *nineteen lacks*, due by the Company to the Nabob.

To prove that a fraud lurked under this statement, the Managers proved from the Company's records, that some time after this, *five lacks* had been paid to the Nabob for the purpose of liquidating his arrear, which when this sum was given, could amount to no more than *four lacks*, as the *fifteen* which were paid to him before, or were said to have been paid to him, towards discharging an arrear of *nineteen*, had of course reduced the arrear to *four lacks*.

But some time after it appeared again in the accounts of Mr. Crofts, that though the arrear was originally no more than *nineteen lacks*; tho' *fifteen* were paid to him afterwards at one time, and *five* at another, which would have discharged the *whole* arrear, and left a balance of *one lack* in favour of the Company, still the Company was stated in the accounts to be full *nineteen lacks* in arrear.

These fraudulent accounts, the Managers said, were kept by Mr. Crofts. They then proceeded to shew, that this Mr. Crofts was the creature and dependent of Mr. Hastings; that, after his accounts had appeared to be false, Mr. Hastings, knowing them to be such, bestowed upon Mr. Crofts a valuable and lucrative situation; that, not contented with this, he gave him an additional salary of 2000l. a year, and directed him to draw for it for *two years* BACK, and to charge an interest of 3 per cent. upon this arrear.

This instance of *generosity* to Mr. Crofts, which occurred after his accounts had been discovered to be false, Sir James Erskine said was to be imputed solely to Mr. Hastings; for when the increase of salary was voted, there were present in the Council only Mr. Hastings and Mr. Barwell; so that, even if the latter had been as hostile to Mr. Hastings as he was known to be under his influence, still Mr. Hastings would have had a majority in himself, by means of his *casting vote*; and therefore this extraordinary act was exclusively his own.

The Managers were proceeding to prove a number of other instances of friendship on the part of Mr. Hastings towards this Accountant, whose fraudulent accounts, they said, were so well

known to him.—But the Lord Chancellor asked them how they could prove all the fraudulent acts of Mr. Crofts relative to the charge then under the consideration of their Lordships, to be relevant. They might, he said, impeach the credit and accounts of Crofts; but unless these accounts related to the present charge, he was at a loss to see the relevancy of them.

Mr. Burke said, it was certainly the object of the Managers to impeach the credit of Mr. Crofts, and they wished to shew that there was an intimacy between him and the prisoner, which argued an understanding between them, and a joint co-operation to conceal their frauds from the Company.—With this view the Managers laid before their Lordships various acts of the parties; but with respect to their relevancy, that was a subject upon which it was the province of their Lordships to determine: he said at the same time, that the Managers would not press upon their Lordships any thing which they should think irrelevant.

The Managers then gave in evidence a letter from the Court of Directors, in which all the accounts made out by Mr. Crofts, relative to the arrear, &c. were censured by them in the strongest terms.

As soon as this letter was read, the Lords adjourned.

FORTY-SECOND DAY.

THURSDAY, May 14.

Mr. Grey informed their Lordships, that the Managers intended to lay before them this day, the accusation brought against Mr. Hastings by Nundcomar; but that they wished first to have some papers read, which would serve to shew the high situation that Nundcomar held in his country at the time to which the Managers alluded, and the high opinion which Mr. Hastings himself entertained of him at that period.

For this purpose, several papers were read from the Company's records, from which it appeared that the Court of Directors ordered Mr. Hastings not to give any office or employment to Nundcomar on the removal of Mohammed Reza Khan; but that a very important office was bestowed by the Governor-General on Rajah Gourdas, the son of Nundcomar.—That when this appointment was censured by the rest of the Council, as being an

effected the appointment of Nundcomar himself, and consequently an act of disobedience to the Company's orders, Mr. Hastings undertook the defence of that unfortunate man, who afterwards fell so much under his displeasure.

Mr. Law desired that another paper might be read, from which he hoped it would appear to their Lordships that Mr. Hastings had received *private* instructions from the Court of Directors to employ Nundcomar, which instructions he was not at liberty to disclose at the time to the rest of the Council; and that this would account for the apparent inconsistency of Mr. Hastings in employing a man, whom he thought unworthy of trust or confidence.—The paper pointed out by Mr. Law was accordingly read.

Mr. Grey next gave in evidence a letter written by Mr. Hastings, full of invectives against Nundcomar, from which he said it would appear that the former had never said any thing to the prejudice of the latter, until he had reason to apprehend that Nundcomar would become his accuser.—This letter having been read, Mr. Law remarked, that it was dated a *year before* the charges were brought by Nundcomar, and that consequently it could not be because this man *had* become his accuser, that Mr. Hastings had made an attack upon his character.

Mr. Grey desired that the learned Counsel would state his expressions accurately, and not put words in his mouth which he had never uttered. He did not say that Mr. Hastings had not made an attack upon the character of Nundcomar until the latter *had* become his accuser.—What he said was—that Mr. Hastings had never said any thing of Nundcomar, until he had reason to apprehend that the latter *would become* his accuser.

The Managers next gave in evidence the different minutes of the Council of Bengal, relating to the proceedings which took place there on the intimation of an intention and wish, on the part of Nundcomar, to bring several charges against the Governor-General. These minutes contained the reasons given by the majority of the Council for hearing Nundcomar, and the reasons assigned by Mr. Hastings for refusing such a proceeding; and finally proved, that the Governor-General dissolved the meeting of the Coun-

cil, when he found they were determined to call in Nundcomar, and receive the charges which he had pressed for leave to exhibit.

The Managers were then proceeding to give in evidence the paper which contained the charges brought by Nundcomar against Mr. Hastings, when they were interrupted by Mr. Law, the prisoner's counsel, who asked if their object in producing this paper, was to make it evidence to prove that Mr. Hastings had actually received three lacs and a half of rupees from Munny Begum, &c.

Mr. Burke replied, that when the evidence should have been received, the Managers would shew to what point they meant to apply it.

Mr. Law said, that if the Managers would not be more explicit, he must consider the papers delivered by Nundcomar to the Council, as produced by the Hon. Managers to prove against Mr. Hastings the receipt of the sum above-mentioned; and if this was the use which was intended to be made of it, he would resist it as inadmissible evidence. The grounds on which he thought it inadmissible were,

1st. That the charges had not been made upon oath.

2d. That they had not been made in the presence of the person accused.

3d. That the Council having been dissolved, and the Governor-General, who was constitutionally an integral part of it, having withdrawn himself, it was no longer a Council competent to act, and that consequently the acts done by it in his absence could not be considered as the acts of the Council.

4d. That Nundcomar having been convicted of forgery, was not that kind of witness whom a Court would admit to give evidence, though his evidence should in every other respect be unexceptionable.—He observed, that though the *conviction of Nundcomar was subsequent* to the production of his charges against Mr. Hastings, yet the *commission of the crime for which he suffered was prior* to that period; and in contemplation of law the infamy had relation to the *crime*, and not to the *punishment*; and as the crime was committed *before* Nundcomar brought his charges, so he must be considered as *infamous at the time*, though his *conviction* did not take place for years after.

Mr. Fox replied, that with respect to the

the object which the Managers had in view, it was not of the smallest consequence whether the charges brought by Nundcomar had, or had not, been delivered upon oath. The guilt of Mr. Hastings was to be made to appear by two ways—by *positive* proof, when such could be procured—by *circumstantial* and *presumptive* evidence, when proof *positive* could not be obtained. Now the manner in which Mr. Hastings behaved when the charges were brought by Nundcomar would, he said, have the effect of fixing upon him a strong *presumption* of guilt; and to do this was one object which the Managers had in view, in offering the evidence to which the learned Council objected: what other use they might make of it hereafter, they were not bound to tell him at this moment. With respect to what the learned Council had said of the conviction of Nundcomar, the Managers had nothing to say; they were not authorized by their constituents, the House of Commons, to investigate the means by which that conviction was effected. “But, said Mr. Fox, to justify myself for what I may have already said on that subject, I can only say, that if I were permitted to speak *my own* sentiments on that point, I would use the precise words which the House of Commons has ordered me not to use; but which, though thoroughly convinced in my own private opinion of the *truth* of them, I will not use, because those who have sent me hither, have given me orders to the contrary.”

Mr. Burke contended, that the Managers had a right to make what use they pleased of evidence which it was fit for their Lordships to receive. He maintained also, that the objections urged by the learned Council against the admissibility of the evidence in question, ought not to be endured. If the charges brought by Nundcomar were made in the absence of Mr. Hastings, he, of all men, ought not to urge that as an objection against them, because he absented himself, that he might not hear the charges: it was his own act. As little ought he to say that the Council was not competent to receive the charges, because it was dissolved. But who dissolved it? Was it not himself? And why did he dissolve it? Was it not for the purpose of smothering an

accusation brought against himself?—He ought to be ashamed to urge, that because the evidence of Nundcomar had not been given upon oath, it ought to be considered by their Lordships as inadmissible.—This self-same Mr. Hastings had said, in his defence before the House of Commons, that it was contrary to the *religious* tenets of the *Hindoos* and *Mussulmen* to take an oath; but now he would have their Lordships reject the evidence of Nundcomar, a *Hindoo*, because it had not been given upon oath.

The objection, that the charges were made in the *absence* of Mr. Hastings, did not apply; for though he was not present, because he *would not* be present when they were made, he was so little ignorant of the contents of them, that he sent them himself to the Court of Directors, and signed them with his name; not indeed to admit the truth of them, but so far to authenticate the charges, and the proceedings in Council to which they had given rise. The conduct of Mr. Hastings in resisting the production of that which he himself had authenticated, he considered as *audacious*.

Mr. Law complained of this expression as *indecent* when applied to a gentleman on the Bar acting to the best of his judgment for his client. He said it must have been to *him* it was applied, and not to Mr. Hastings; for it was he who had used the arguments which had offended the Hon. Manager.

Mr. Burke would not retract the expression.

The Lord Chancellor said, that he made no doubt that when Mr. Burke had considered it coolly, he would be of opinion, that delicacy should prevail in a case of this kind.

Mr. Burke replied, that if he was prosecuting some poor *friendless* and *forlorn* felon, whose *life* might be the forfeit of a conviction, he trusted he should not drop a syllable against him that the most scrupulous delicacy could think unnecessary to the prosecution: but he felt very differently when he saw a man with the most powerful friends and connexions that wealth could produce, grow daring in proportion to the magnitude of his crime, and in that very magnitude seek for impunity. Their Lordships never would suffer a man to avail himself of his own wrong, or to prove that he was innocent

innocent of one crime by shewing that he was guilty of another. This was what the prisoner was aiming at, when he objected to the competency of the Council to receive the charges, though the incompetence, if any there was, had been occasioned by himself; for he dissolved the Council for the purpose of creating that very incompetence which he now with so much modesty, not audaciousness, endeavoured to urge.

The Lord Chancellor said, if he understood the Hon. Managers right, with respect to the evidence which they offered, they did not want to rest so much upon the contents of the paper that they wanted to have read, as upon the circumstances of Mr. Hastings' behaviour when the charges were offered, and from which they inferred the presumption, that he was conscious of guilt.

Mr. Fox replied, that though he maintained the contents of the paper might be evidence, still what the Managers had at that moment in view, was what the noble and learned Lord had just stated.

Mr. Law said, that if the Hon. Managers had said this much a little sooner, he would not have started any objection to the production of the paper. He was therefore ready to admit it now, provided it were understood that the idea of making any use of the contents of the paper as evidence was totally abandoned.

Mr. Fox replied, that he would not enter into a contract, the like of which had never been heard of in a Court of Law—namely—"that evidence which was admissible should be applied only to one particular point."—Whatever evidence was offered by the Commons, and was determined by the Lords to be admissible, that the Managers would give: it would be for their Lordships to apply it legally.

The Lord Chancellor observed, that the Hon. Manager was right: their Lordships would suffer evidence to apply to that only to which, from its nature, it ought to apply.

Lord Stanhope asked, what was the part of the charge which he expected to be able to prove by the admission of the proposed evidence?

Mr. Fox replied—"the receipt of the three lacs and a half of rupees."

Mr. Law, on hearing this, renewed his objection to it.—However, after

some little conversation, it was given up, and the Managers were going to proceed, when

Lord Kenyon rising said something, but in so low a voice that we could not hear him. We heard him, however, a little after, move their Lordships to adjourn to the Upper Chamber of Parliament.

Their Lordships accordingly adjourned to their own House, and sat some time in debate; so that they did not return to Westminster-Hall.

FORTY-THIRD DAY.

WEDNESDAY, May 20.

To render the abstract which we are going to give of this day's proceeding more intelligible, we must go back a little, and inform our readers, that at a meeting of the Council at Calcutta, on the 13th of March 1775, the Governor General being absent, Nundcomar was called in and examined by the Council; and delivered to them several specific charges against Mr. Hastings.

At a meeting of the Council on the 21st of the same month and year, Mr. Hastings being in the Chair as Governor General, the examination of Nundcomar and the charges brought by him were read as minutes of the preceding meeting of the Council. These Mr. Hastings afterwards transmitted to the Court of Directors, and signed with his own hand, not, as he said, that he admitted the legality of the proceedings which he witnessed, but merely to authenticate them.

At the last sitting of the Court, the Managers offered in evidence the charges delivered by Nundcomar on the 13th of March 1775. The Counsel for Mr. Hastings objected to the admission of this as evidence, and the Lords adjourned to take into consideration the arguments urged for and against it.

Accordingly this day, the Lords having previously taken their seats in Westminster-Hall, the Lord Chancellor rose, and thus delivered the Resolution of the Peers, *verbatim*.

"Gentlemen of the House of Commons"

"The Lords have decided, that it is not competent for the Managers of the Commons to produce the examination of Nundcomar, as tendered in evidence—the MANAGERS not having proved nor EVEN STATED any thing

"thing as a ground for admitting such evidence—which, if proved, would render the same admissible.

"And this resolution they have commanded me to deliver to you."

The Lord Chancellor having twice read their Lordships Resolution, the Managers begged leave to withdraw for a little time.—On their return, Mr. Burke said it was with no less surprize than concern, he had heard the determination of their Lordships on this head, because it would have the effect of throwing many difficulties in the way of the prosecution. However, it was for their Lordships to pronounce, it was for him to submit.

He then desired that the minutes of the Council held at Calcutta on the 21st of March 1775, might be read.

They were read accordingly; and it appearing that Mr. Hastings, in a minute delivered at that time, referred to the minutes of the Council held on the 13th, Mr. Burke desired the latter might be read.

Mr. Law objected to this. He said that what was now proposed, fell within the objection he had already made to the reading of the original minutes of the 13th; for this was doing at second-hand, what their Lordships had just determined could not be done at first-hand. If the charges stated in the minutes of the Council held on the 13th were not admissible in evidence, the repetition of them in the minutes of the Council held on the 21st, did not make them admissible.

Mr. Fox observed, that the minutes of the second Council were admitted to be evidence: these minutes stated that some other minutes taken at a former Council were read, which other minutes contained the charges brought by Nundcomar.—Now as the Council referred to these *other minutes*, it was necessary that they should be read, or the former must remain unintelligible.

Mr. Law replied, that if they were produced *solely* for the purpose of rendering the minutes of the Council of the 21st intelligible, and it was understood that no inference was to be drawn from them that could affect his client, he would not object to them, otherwise he must call for the judgment of the Court.

Mr. Fox said, that in the first place their Lordships having suffered the minutes of the second Council to be

read, admitted them to be evidence; and it necessarily followed, that if this admissible evidence referred to some paper without which it could not be understood, that paper ought also to be given in evidence, and the whole should be taken together; What inference could be supported by the evidence thus rendered complete and intelligible, it was their Lordships province to determine.

The Lord Chancellor said, that whatever Mr. Hastings had *said*, whatever he had *done*, connected with the substance of the charge then under consideration, might be admissible evidence in support of the charge.

Mr. Fox upon this observed, that Mr. Hastings was present at the second Council, when the minutes of the preceding Council, containing the accusation brought by Nundcomar, were read; he afterwards signed them, and transmitted them to the Court of Directors. This circumstance sufficiently connected him with the minutes of the charge, and consequently made them good evidence against him.

Lord Kenyon moved their Lordships to adjourn to the Upper House of Parliament, and they adjourned accordingly. In about an hour's time they returned to Westminster-Hall; and the Lord Chancellor spoke as follows:—

"Gentlemen of the House of Commons,
"The Lords have resolved, that the
"circumstance of the CONSULTATION
"on the 21st of March, and at which
"Mr. Hastings was present, does not
"of itself make the matter of such
"consequence that the Consultation of
"March 13th should be read."

Mr. Burke observed, that, worded as their Lordships' opinion was, he could not say that he perfectly understood it; but if he understood it right, and the Court would then receive it, it implied, that, though the way in which the Commons had offered the minutes of the Council of the 13th did not make them admissible evidence, still there was a way in which they might render them admissible. In that case he must say, that the Commons not only did not understand the law, like *technical* or *professional* men, but that they had always laid in a claim to be considered as a body acquainted only with the general principles of natural justice. They therefore claimed

claimed the same assistance from their Lordships, which was ever granted to men who were pleading their own cause by themselves, and not by Counsel. If therefore there was any way by which the evidence offered by them might be rendered admissible, they called upon their Lordships to point out to them that way.

The Lord Chancellor said, it was necessary that Mr. Hastings should, by some *act of his own*, give a degree of admissibility to the charges offered by the Hon. Managers, which of themselves they did not intrinsically possess. Whatever was *said or done* by Mr. Hastings was evidence against him; but if what was said by other persons against him, without his own knowledge, was to be admitted against a defendant, then *slander and calumny* might be adduced as *proofs* of guilt. He did not mean by this to say, that what was urged against Mr. Hastings was slander or calumny; he spoke on this occasion in general terms, without any allusion to any particular case.

Mr. Fox would not admit that it was necessary to prove some *act* done by a person accused in reference to the evidence offered against him, for the purpose of rendering it admissible. Not to do what a man was bound to do, was no less a substantive crime, than to do something that was forbid. *Guilt* was no less attached to *omission* than to *commission*. It was not, therefore, in his opinion, necessary for the Managers to shew that the prisoner had done some *act* in consequence of the charges brought by Nundcomar: to shew that after having had notice of these charges, he did *nothing*, and took no one step in consequence of them, was of itself sufficient ground for a *presumption*, that he felt a *consciousness of guilt*. The Managers wanted not to prove by the production of Nundcomar's charges, that they were well founded; still less did they want to prove that a *charge* was to be taken as *evidence of guilt*. But they wished to give the *demeanor and conduct* of Mr. Hastings *under these charges*, as evidence of a *presumption* of guilt, of the weight of which presumption, however, their Lordships were afterwards to determine.

It is not necessary that charges should be brought by persons legally authorised so to do, or even that they should be founded, to entitle a prosecutor to give

in evidence the behaviour of a man, when such charges were made in his hearing. Surely then the Managers might give in evidence that the prisoner, whose duty it was to enquire into acts of speculation and corruption, not only did not enquire into them, but when charges of that very nature were brought against *himself*, no matter whether true or false, he did all that lay in his power to stifle the enquiry, and never once attempted to defend himself against the charges, or so much as to deny them.—It was on this ground that he would beg leave to offer in evidence the minutes referred to in the minutes of Council of the 21st of March, and not merely because they had been read to the prisoner: this, he conceived, took them entirely out of their Lordships' last determination, and left the Managers to offer these minutes upon other grounds than *those* which their Lordships had already determined would not make them admissible.

Mr. Burke said, that by a special Act of Parliament, the Governor-General was bound to pay obedience to the orders he should receive from the Court of Directors. That Court sent the prisoner *orders* to make enquiry relative to acts of speculation and corruption.—This he was bound by law to do; but when his colleagues in obedience to those orders set on foot enquiries, which at last reached the person of the Governor-General himself, that man, instead of concurring with them, as he was in duty bound, and as a regard for his own *honour* should have prompted him, did all that lay in his power to prevent them from proceeding, by dissolving the Council, and absenting himself from their meetings. His absence, instead of affording a reason for rejecting the information brought against him, should be rather considered as an aggravation of his guilt, for his absence was *voluntary and contumacious*.

It was not ignorance of the existence of the charges that had prevented the prisoner from answering them; for he had heard them read, and had signed them. But he would have it thought that it was by the *contempt* in which he held Nundcomar, his accuser, he was restrained from answering the accusations brought by him: He forgot however, that he had said to the Court of Directors, that he considered Sir John Clavering, Col. Monson, and Mr. Fran-
cis,

cis, as his *accusers*, and *Nundcomar* only as their *instrument*.—Surely he could not have held such men as these in *contempt*, or consider a charge brought by them, even if it was false, as so light and trivial as not to be entitled to an answer.

Now tho' this charge was brought by the Commons of England, who considered it of so much weight as to make it the ground of an impeachment, was Mr. Hastings inclined to answer it?—No. He was fully satisfied with escaping from punishment even at the expense of *honour*. He rested his defence upon quibbles and legal objections to evidence, and not upon the merits of his cause. He appeared not to look for any thing more honourable than an OLD BAILEY acquittal; where, upon some defect in the evidence, the prisoner is acquitted by the jury, receives a severe reprimand from the judge, and carries away with him the execration of the whole Court.

The Lord Chancellor said, that if the Hon. Managers could shew that evidence offered could apply, by connecting it with some CRIMINAL act done by the prisoner, they would make use of it.

Mr. Fox said, that if the Managers should attempt to do that, the evidence ought to be first before their Lordships, as it was from the detail of the evidence connected with the prisoner's conduct under the charge, that the Managers could shew the application of it.

Mr. Burke insisted that it was not necessary that any one of the acts forming the links of a chain of *circumstantial* evidence, leading to the proof of a crime, should be in itself criminal. In laying down this position, he had the authority of a Judge who was still alive, he meant Mr. Justice BULLER. In his address to Captain DONNELLAN after conviction, he stated the several circumstances, which, in the opinion of the learned Judge, had put the proof of his guilt beyond a doubt, viz. the letter he had sent to Sir William Freeman—the different accounts he had given of his conduct—the rinsing of the bottle.—Now, said Mr. Burke, the sending a letter to a gentleman, and the rinsing of a bottle, are acts in themselves not criminal; nor was it criminal in a man not to turn his own accuser; but from these acts, in themselves harmless, was to be deduced the guilt of the accused.

He begged leave to apply the principles of Judge Buller in Capt. DONNEL-

PART II.

LAN's case to the present. Poisoning was a crime contrived and executed usually with great secrecy; and consequently it could rarely be traced to its author but by *circumstances*. The case was exactly the same in *bribery*. When Mr. Hastings was accused of this crime, he did acts which, considered in themselves, were not criminal—he dissolved the Council, and refused to be present at the meetings of his colleagues. But why did he do this? The *presumption* was strong, that he acted to with a corrupt and criminal intent, to stiffl enquire into his own conduct. Here then, as in the case of Captain DONNELLAN, were acts in themselves harmless, leading to the proof of an heinous crime. If this kind of evidence was now to be resisted, if circumstantial evidence was to be rejected, and none to be admitted that was not *positive*, then he would give joy to all East India delinquents. He would say to them, "The laws intended to restrain you are mere scarecrows—Plunder on, and accumulate wealth by any means, however illegal, profligate, or infamous, you are sure of *impunity*; for the natives of India are debarred by their religion from appearing against you out of their own country, and circumstantial evidence will not be received against you. Plunder therefore, plunder at will, impunity is sure to await you."

Mr. Fox reminded their Lordships, that the eyes of the world were upon them, and their own and their country's honour at stake. If their Lordships adhered to the principle laid down by them, there was no doubt but they would secure impunity to all speculators in India; for all that such persons would in future have to do, would be to take no notice whatever of any accusation, and then they might bid defiance to justice. According to the new principle to which he alluded, acts of *omission* not being considered as evidence, it would of course be always in the power of a delinquent to secure himself from punishment; and therefore, when in future charges should be brought against individuals in India, instead of making any defence against them, they would take no notice at all of them; and this *omission*, which in reason and common sense ought to be considered as a tacit confession of guilt, would be the most effectual way to set justice and punishment at defiance.

Their Lordships should therefore ponder

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der well on what they were going to determine, as upon their determination it would depend, whether delinquents in India should in future be placed beyond the reach of public justice. Parliamentary impeachments were first ordained to the end that persons who might be too powerful for the ordinary course of law, might be brought to justice in this extraordinary way: and therefore it never could have been intended by the wise framers of our constitution, that the High Court of Parliament should be bound by any rules but by those of the High Court of Parliament; and consequently that it should not be fettered by those rules of law which prevail in inferior Courts, and which between man and man may be extremely proper: but in cases like the present would tend rather to defeat than promote the ends of public justice. *Fiat justitia ruat cælum* was a fine maxim, but it might be carried too far. The object of those who brought the impeachment, and those who were to try it, was to do *substantial* justice between the public and the accused. Whatever rule of evidence would promote that great end ought to be rigidly and strictly observed by their Lordships: Whatever rule of law stood in the way of such *substantial* justice, could not, and ought not to be binding upon them.

Mr. Law rose merely to protest in his own name, and in that of all the people of Great Britain, against the doctrine with which the Hon. Manager had concluded, and to offer to prove that the High Court of Parliament was bound by the same rules of evidence that obtain in the Courts below.

The Lord Chancellor said, that their Lordships had twice already given their opinion upon the evidence which was offered: if the Commons wished them to consider it again, there must be further consultation.

And for this purpose their Lordships adjourned.

FORTY-THIRD DAY,
THURSDAY, May 21.

The Lord Chancellor acquainted the Managers, that their Lordships having taken into consideration the question which arose the preceding day upon the admissibility of the Minutes of the Council of the 13th of March 1775, had come to the following resolution:—

“ That the consultation of the 13th of March cannot *now* be read.”

Mr. Burke said, that though he was sorry to hear that such had been their Lordships' determination, he derived no small degree of consolation from the word *now*, which he was glad to find made part of it: for he considered this as a word rather of *limitation* than of *exclusion*; and consequently he understood by it, that though their Lordships saw no reason for admitting the proposed evidence *now*, yet they would not reject it, if cause should be shewn hereafter why they should admit it. He trusted that the word *now*, which formed part of the resolution read by the noble and learned Lord, would not be found to resemble *that now* described by the Poet—

“ Which *now* is, and shall for ever last.”

Having premised this, he said he would acquiesce in the judgment of their Lordships, until he should be able to shew them cause for reversing it.

He then desired that the Minutes of Council of the 20th of March might be read. They were read accordingly. And from these it appeared that CANTO BABOO, a native of India, in the service of Mr. Hastings, had been ordered by Sir John Clavering, Col. Monson, and Mr. Francis, to attend the Council; that he had not obeyed their summons at first; and when he afterwards attended the Council, he assigned for the reason of his non-attendance at the first summons, that he had received an order from the Governor General not to obey it.

This point being established, Mr. Burke went back to the minutes of the 13th of March, and desired that they might *then* be read.

Mr. Law resisted the wish of the Manager; he said their Lordships had repeatedly given judgment on this point, and he claimed the benefit of it.

This produced another debate, differing but little in substance from *that* which took place the preceding day on the same subject; and therefore we shall be the less diffuse in our account of it.

Mr. Burke insisted that the Commons had now intitled themselves under the decision of their Lordships, to read those minutes. They had now connected the charges brought against Mr. Hastings with the personal conduct of *that*

that gentleman. An enquiry had been set on foot into acts of *corruption* and *peculation*, in which Mr. Hastings was implicated; CANTO BABOO, the prisoner's *Banyan*, had been mentioned as being concerned in, or having some knowledge of some of these acts, and was therefore ordered to attend the Council; but more particularly, because he had made some endeavours to get at a letter sent by MUNNY BEGUM, signed with her hand, and sealed with her seal, in which some of those acts of corruption were mentioned. This *Banyan* however at first contumaciously resisted the order given for his attendance by the majority of the Council; and when at last he did attend, he said, that his reason for having refused to obey the former summons was, that he had received an order from the Governor General, forbidding him to attend. This, Mr. Burke said, was a strong ground for the admission of the evidence offered by the Commons to prove that the prisoner had endeavoured to stifle the accusation brought against him, by doing all that lay in his power to keep back the testimony of those who could give information on the subject. This proved a presumption of guilt against the prisoner, and laid the best ground for the admission in evidence of that accusation from which he had shrunk, and which he had endeavoured to stifle and suppress.

Mr. Fox maintained, that the evidence which had been this day read, took the minutes of the 13th of March so completely out of the different decisions made by their Lordships, that he trusted they would now admit, on the grounds of what they had heard this day, that very evidence which they had rejected hitherto, not because it was in itself inadmissible, but because their Lordships did not conceive that sufficient grounds had been established, on which its admissibility might be supported. The evidence given this day shewed, that Mr. Hastings, finding a charge brought against him, endeavoured to suppress that charge, by keeping back the evidence which was thought necessary to the support of it. Now, that their Lordships might see the degree of guilt which this act might fix upon the prisoner, it was absolutely necessary that they should hear the charge read, which he had, as it had been this day proved, endeavoured to stifle.

Mr. Sheridan observed, that there was a very striking distinction between the *materiality* or *weight* of evidence, and its *admissibility*. This distinction would appear the more marked by a reference to the practice of the Courts below.—There the *materiality* or the *force* of evidence was left to the jury; its *admissibility* on the contrary was left to the judgment of the Court.—Their Lordships ought not therefore, in the present instance, to consider the *weight* of the evidence, but solely its *admissibility*: when the whole was before them, and they were called upon for judgment, then of course they would weigh the *credit*, and try the *force* of the evidence; but in the present stage of the business, its *admissibility* alone should be considered. If they insisted, however, upon the former, and wished to know the whole force of the evidence, before they pronounced upon its admissibility, it would be no difficult matter to connect the minutes of the 13th of March with the conduct of Mr. Hastings, and to prove by his subsequent conduct that he himself considered the charges stated in those minutes, as but too well-founded: this would appear strikingly by his conduct towards *Nundcomar*, whom, for the purpose of destroying the weight of his accusation, he caused to be indicted for a *conspiracy*.

The Lord Chancellor asked Mr. Law, what he had to urge against the admission of the minutes of the 13th, now that some new ground seemed to have been laid for the admission of them, which had not been established when their Lordships made their last decision.

Mr. Law said he was in possession of their Lordships' decision; and would claim the benefit of it. They had declared that the minutes in question could not *now* be read, and by that judgment he would abide.

Mr. Burke conjured their Lordships to weigh well, and seriously consider the question which was then before them. If, in a business of the magnitude then under their consideration, they adhered to those rules which in a cause at *nisi prius* might be the guides of their deliberations, they would destroy the very essence of justice, by an ill-timed and ill-judged adherence to *forms*. They should consider the nature of the country in which the crimes imputed to the prisoner were committed,

and the nature of its connexion with this. The capitals of other Empires had usually been crowded with natives from its most distant provinces, led either by curiosity or interest. In the capital of the British Empire, to which a country containing 24 millions of inhabitants belongs, one might expect that, from similar causes, the streets would be blackened with swarms of Indians; but they were restrained by the religion and customs of their country, which would not suffer them to come to Europe, without a sacrifice of their cast, or rank in life, which would as it were excommunicate and banish them from society. Only one single Hindoo had ever been in London, whose name was *Sulham Dosi*; he returned home Mr. *Sulham Dosi*, but no longer a Hindoo; for, by having left his own country, he was driven from his cast, and had no further rank among his countrymen, but was an outcast even amongst his own relations. The only way then by which the government of this country could know or redress the grievances of the natives of India, who would never appear at a Tribunal in England to complain of their Governors, was by receiving in evidence the complaints of these people, recorded in the books of the East-India Company, and transmitted to Europe. This was the only communication which the nature of the religion and customs of Hindostan rendered possible between the European Governors and the governed. If their Lordships cut off that only communication, which must be the case if such evidence as was now offered was rejected, then they would leave the oppressed natives of India to be plundered and ruined without the possibility of redress: and such conduct on the part of this country, would amount, in reason and in justice, to an abdication of the Government of India. Our possessions in India were not to be governed by *nisi prius* rules: nor were Governors to be left at liberty to plunder the wretched natives, because these poor people did not know that the rules which prevail in the determination of suits in England, made it necessary that the evidence should be upon oath.—This circumstance might be unknown to them when they made their complaints; and it might be as much unknown to them, that the complaints preferred by them even in the Council-Chamber of Cal-

cutta, before three out of the five members of that government, could not be considered as made in Council, and must consequently be passed over without redress, because, forsooth, the Governor, who contumaciously, and for a bad purpose, absented himself, was not present.

He reminded their Lordships, that their conduct was now open to the view and consideration of all mankind; and to the judgment of mankind even the highest tribunals upon earth must bow. But it was not the world alone that looked on; the SOVEREIGN OF THE WORLD, the Father and Refuge of the whole human race, the Avenger of wrongs, and the Protector of the oppressed, was a party in this business: their Lordships, as his *Viceregents* in the judgment-seat, were bound to do justice; to Him they were responsible for their conduct; and though they should disregard the opinion of the world, yet the fear of GOD should ever be before their eyes, when they were executing the sacred trust of administering justice.

—*Si mortalia temnitis arma,
At sperate Deos memores fandi atque nefandi.*

The Lord Chancellor wished the Managers would state all the grounds on which they thought the minutes of the 13th might be made admissible evidence.

Mr. Fox said, there might be many grounds which would occur in the course of the proceedings upon the present article, though at this moment they might not occur to the Managers. It was sufficient if they stated one ground on which these minutes might be made admissible. That ground was the interference of Mr. Hastings to prevent the attendance of his own servant, *Canto Baboo*, when the Council wanted to examine him respecting one of the charges against Mr. Hastings recorded in the minutes which the Managers wished to have read. On this one ground the Managers craved their Lordships' judgment.

The Lord President (Earl Camden) said, that the judgment which their Lordships had already pronounced, was misunderstood by the Counsel for the defendant, if he imagined it went the length of declaring that the minutes in question were in no case admissible. All that their Lordships meant

meant to say in that judgment was, that at the time when it was pronounced, nothing had been stated by the Hon. Managers, or given in evidence to prove that the Lords ought to suffer the minutes to be read. But since that judgment was given, the Hon. Managers had certainly laid before their Lordships some evidence relative to Canto Baboo, which might make it proper for them to review the judgment they had pronounced. At the same time he wished the Hon. Managers could find it convenient to state to the Court all the grounds on which they conceived the minutes of the 13th of March ought to be received in evidence.

The Managers hearing this, begged leave to withdraw for a while to consult.—On their return, Mr. Fox said, it would give the Managers great pleasure if they had been able to comply with the wish of the noble and learned Lord. But they conceived that the principle on which they now called for their Lordships' judgment, would occur so frequently in the course of the trial, that they wished once for all to have a decision upon it; and this they were sure would save a great deal of time and trouble to the Court.

He said, an Hon. Manager had shewn with true precision the distinction between the *effect* of evidence and its *admissibility*.—In Courts where the jury pronounced upon the former, and the Court upon the latter, the Judges knowing what effects improper evidence might have upon the minds of men not sufficiently informed to be able to ascertain the evidence which they ought to reject, and that on which they ought to found their verdict, never suffered inadmissible evidence to be given at all, or heard by the jury. But when evidence was in itself admissible, no matter how slight, how frivolous, or how incredible it might be, the Judge was bound to suffer it to go to the jury, whose province it was to determine the degree of credit to which it was intitled. But this caution was not necessary in such a Court as was that in which he then had the honour to stand: they need not be afraid to hear admissible evidence, however trifling or nugatory it might prove, because they were themselves the very persons who were afterwards to decide upon its *weight* and *effect*.

Mr. Fox was happy, he said, that he had

it in his power to fortify his opinion with the authority of living Judges. Lord Mansfield, in a case reported in Burrows, observed, that the distinction between *admissible* and *credible* evidence was built on very subtle reasoning: for his part, he felt himself inclined to overlook the distinction, and to concur with those, who, of late years, had judged it best to admit all evidence which could possibly have any relevancy to the cause, and suffer it to go to the jury, taking care to accompany it with such remarks as would prevent it from producing improper effects on the minds of the jurors. Such was the substance of the opinion read by Mr. Fox, delivered, as he said, by a Judge who had so long presided in the first criminal court with so much honour to himself and advantage to the public, in which however, *to the regret of his country*, he no longer presided. In this opinion Mr. Justice Ashurst and Mr. Justice Buller had concurred. Mr. Fox then read another and a more recent case, in which Lord Kenyon sat as Judge, and in which he conformed to, and adopted the opinion of, his able predecessor Lord Mansfield.

Having stated these different arguments, Mr. Fox pressed their Lordships to give judgment with respect to the admissibility of the minutes of the 13th, on the ground of the evidence given this day from the minutes of the 20th.

After some little conversation, their Lordships adjourned to the Chamber of Parliament, to take the case into consideration.

Mr. Law took an opportunity before the rising of the Court to observe, that *Gulsham Dofs*, mentioned by an Hon. Manager to have lost his *cast* by coming to England, had had no *cast* to lose, for he was no more than a common ship-builder at Bombay.

Mr. Burke maintained that what he had stated respecting *Gulsham Dofs* was founded in *fact*—but tho' it was not the representation of his case, as given by the learned gentleman, would prove all that he wanted to prove, as well as the statement which he himself had made; for it would shew that no Hindoo who had any *cast* to lose, had ever ventured to come to England; and that no Hindoo could come to it who was not the outcast of his country. This would have exactly the same weight as

proof

proof that no Hindoo had visited the island but *one*, and that for so doing had forfeited his cast

FORTY-FOURTH DAY.

WEDNESDAY, May 27.

The Lords took up so much time in debating in their own House the resolution proposed in consequence of the opinion given by the twelve Judges, upon the question * stated to them respecting the evidence offered by the Managers on the 21st, that it was past two o'clock before their Lordships took their seats.

The Lord Chancellor then informed the Managers, that their Lordships had directed him to communicate to them the following Resolution of the House.

"That the minutes of consultation of the 13th of March, from the time that Mr. Hastings quitted the Council, could not be read in evidence."

Mr. Burke remarked, that a Resolution formed upon principles which had not been stated, and which he could not discover even by *conjecture*, could not fail to embarrass the Managers in every stage of the prosecution. But this was not what was to be considered as the *worst* consequence of the Resolution; it would operate as an *encouragement* to future Governors of Bengal to amass wealth by oppression and speculation: for it would hold out to them the most certain and unbounded impunity. Their Lordships, no doubt, had good grounds for their proceeding on this point; but he feared that the bare statement of their decision, unaccompanied by that of the grounds on which it was formed, would not strike the world as founded in true policy.

Peculation in India would be no longer practised as it used to be in India, with caution and with secrecy; it would in future stalk abroad in noon-day, and act without disguise, because, after such a decision as had been just made by their Lordships, there was no possibility of bringing into a Court the *proofs* of peculation in India. Though these proofs should be signed by the delinquent, and transmitted by him to Europe; though he should reason upon those proofs, and endeavour to show that they were insufficient; though he should record the accusation and his defence in the archives of the East India Company, still these instruments and records were not to be received against him as evidence even of a *presumption* of guilt. How far then such a decision was consistent with the future happiness of India, with good government and sound policy, THE WORLD AT LARGE WOULD JUDGE.

It was not his intention, he said, to trouble their Lordships any farther for the present, with arguments to shew that the examination of Nundcomar before the Council ought to be received in evidence; but there was a document mentioned in the minutes of that Council, to which he presumed their Lordships' decision could not be supposed to extend; and therefore he trusted that though they would not suffer the examination itself to be read, they could not refuse to permit him to give as evidence a letter delivered to the Council by Nundcomar, which letter was written by Munny Begum, and contained a charge that *she* had given Mr. Hastings *two* lacks of rupees for the office of guardian to the Nabob of

* The Question was as follows:

"Whether it be competent for the Managers to produce an examination without oath by the rest of the Council in the absence of Mr. Hastings, the Governor, charging him with corruptly receiving three lacks 54,105 rupees, which examination came to his knowledge, and was by him transmitted to the Court of Directors, as a proceeding of the said Councilors, in order to introduce the proof of his misdemeanor thereupon; it being alledged by the Managers for the Commons, that he took no steps to clear himself, in the opinion of the said Directors, of the guilt thereby imputed, but that he took active means to prevent the examination by the said Councilors of his servant—*Canto Baboo*."

To this the Judges gave the following answer:

"That it is *not* competent for the Managers to produce an examination without oath by the rest of the Council in the absence of Mr. Hastings, the Governor, charging him with corruptly receiving three lacks 54,105 rupees, which examination came to his knowledge, and was by him transmitted to the Court of Directors, as a proceeding of the said Councilors, in order to introduce the proof of his misdemeanor thereupon."

On its being moved, "That the House do agree in this opinion," it was carried in the affirmative; and it was ordered, "That the Lord Chancellor do acquaint the Managers for the Commons with the said determination."

Bengal.

Bengal. The authenticity of this letter did not depend upon the *credit* of Nundcomar, but stood entirely on its own bottom. It was, strictly speaking, not only a part of the charge made by Nundcomar, but was a separate and substantive charge in itself. Its authenticity could not be doubted; for that had been proved by Sir John D'Oyley, Mr. Ansell, and a PERSIAN MOONSHEE, who had translated it, and after having examined the *seal*, pronounced it to be the seal of Munny Begum.

Here then was an *authentic* instrument, containing a charge of *bribery* brought against Mr. Hastings by a woman, whom the *prisoner* would not call the *basest* and *wilest* of all human kind, (epithets which he had bestowed on Nundcomar) for he had raised her to the highest office in the State, and declared her to be the fittest person to discharge the duties of it. What objection then could be started against the production of such an instrument as *evidence*?

Mr. Hastings himself had *never* once so much as *insinuated*, in all which he wrote on the subject of Nundcomar and his charges, that this letter was a *forgery*. Nay, when he himself sent Commissioners to her, to procure answers to certain specific queries which he himself had drawn up, there was not a word of instruction to the Commissioners to enquire whether that letter was or was not *genuine*. This circumstance alone was sufficient to prove, that he did not consider it as a *forgery*, but as an authentic paper, actually sealed and sent by Munny Begum herself.

He was aware that it had been already stated, and probably would be urged again, that the signing and sealing ought to be proved by *ocular* witnesses, or that the instrument could not be received as evidence.

The principle on which this objection was founded, reminded him of some rules of evidence laid down in times remote from the present, by a body of men who governed or were said to have governed Europe in former days:—The persons whom he meant were the CLERGY.

As charges of *gallantry* against that body were considered in a very heinous light, so the proof of them was made proportionably difficult. For it was ordained that when a *Presbyter* was accused of *gallantry*, the fact must be proved by *thirty-two* OCULAR wit-

nesses; and by *seventy-two*, if the charge was brought against a *Bishop*.

This rule of evidence was considered by the whole body of the laity as calculated to keep out of Court, and from the knowledge of the Judges, things that were known to all the rest of the world.

Precisely the same would be the consequence of the rule laid down by their Lordships, and of the objections urged by the Counsel for the prisoner—They would keep out of Court documents and charges which were matters of *public notoriety*.

The rules of evidence, to be *just*, ought to be suited to the *nature* of the case; nor were Judges in one Court to be governed by rules established in another, the constitution and objects of which were different.

The grounds of justice ought not to be *narrowed*. It was a wise maxim—*Boni judicis est ampliare justitiam*. It was another wise maxim—*Non aliud natura, aliud sapientia dicit*. From the former he would draw this conclusion, that a Judge ought not to *fetter* justice by rules of evidence that would defeat the very ends of justice. From the second he would infer, that as *wisdom* and *nature* could not be at variance, whatever rule of evidence was not sanctioned by the *latter*, must be condemned by the former.

Now plain *nature* inculcated, that the case must govern the rules of the evidence, and not the rules of evidence the case. It said also, that rules which might be highly proper in one situation of things, might be highly improper in another; that they might be suited to one country, and impracticable in another.

The law of England might be thought by some to be formed on principles that would narrow and fetter justice, because it was not applicable to all the cases that might be brought to be tried by it.

But this was not the case. The law of England was extremely provident, and established different tribunals for different sorts of causes, and governed by different rules of evidence.

Thus we found the *Common Law Courts* governed by far different rules from those which obtained in the *Spiritual* or *Ecclesiastical Courts*, where partly the *Civil*, partly the *Canon Law* prevailed.

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The Court of *Chancery* and the Court of *Admiralty* had their distinct rules of evidence. But lest there should occur a case to which none of the rules of these Courts could apply, the Law and the Constitution had provided another tribunal, not bound by any rules but those which attached naturally upon the case, and that tribunal was the HIGH COURT OF PARLIAMENT, where their Lordships, who were the Judges, were to decide upon sound principles of natural justice, and not according to certain narrow rules laid down in other Courts.

Their Lordships, he said, were not considered by the Constitution as *learned in the law*. They were considered merely as BARONS, SWORDSMEN, and CAVALIERS (with whom were mixed the Bishops, whose learning was of a different nature from that of the LAW) sitting to administer justice according to the dictates of *plain sense*, and principles of *equity*.

To those dictates, and to those principles, he said, they must recur, if they expected to do justice to the people of India; and he would venture to affirm, that they would find it necessary to make *ordinary* rules of evidence give way, if they wished not to stop the course of that very justice, which, he was sure, it was their inclination as much as it was their *duty* to administer.

They would find, he said, that the Legislature of their country was frequently obliged to make the ordinary rules of evidence bend to the *nature and necessity* of a new case. It was a rule of law, "That no man should be suffered to give evidence in a cause in which he was interested, either in relieving himself from a debt or a burden, or in recovering a debt." One would imagine, that if there was in nature a rule without an exception, it was this. There were, nevertheless, instances in which the very nature of the case required that this rule should be dispensed with. He begged leave to state one. The Act of Parliament by which a man is enabled to sue the country for what he may have lost by being robbed between sun-rise and sun-set, declares that the evidence of the person robbed shall be received.

Thus was a man permitted to be a witness in a cause, in the event of which he had an interest. Why was the ordinary rule of law laid aside in such a case? Because if it was enforced, the

Act of Parliament would be nugatory, and a dead letter; for the nature of the case might not admit of a second witness, it not being a very common practice for felons to rob in the sight of many witnesses.

All then that their Lordships ought to require was—the very best evidence which the nature of the case would admit.

If they should require in a cause in which *Gentoos* were COMPLAINANTS, the same kind of evidence that they would require from *Europeans*, it was morally impossible that any person accused by them, or in their behalf, could ever be convicted. In England, in the Courts of Common Law, the *personal* appearance in Court of the witnesses was absolutely necessary. But when GENTOOS were to be the witnesses, their *personal* attendance in England was rendered *impossible* by their religion and national customs.

To prove this assertion, Mr. Burke read a passage from a Report to the House of Commons by the Committee of Secrecy, of which some noble Lords, whom he then saw seated among their Lordships, had been Members before they were raised to the dignity of the Peerage. The passage stated, that the Committee having examined several persons well acquainted with the religious principles and customs of the *Gentoos*, found that these people were taught by their religion to consider the element of *water* as SACRED; and that as it was impossible for them to make long voyages without unavoidably *polluting* and *prophaning* what they deemed to be HOLY, so no *Gentoo* could come to England, without doing what would make him forfeit his *castor* rank in life;—and that if any *Gentoo* were to be prevailed upon to come to England, he was to be considered as a person *disregarding* all OBLIGATIONS OF RELIGION, and consequently NOT entitled to CREDIT as a WITNESS.

Mr. Burke reminded their Lordships *en passant*, that on Friday last he had asserted that no *Gentoo* could come to England without forfeiting his cast; and that the Counsel for the prisoner had partly contradicted him at the time. The passage that had been just read would enable their Lordships to judge between him and the Counsel on this point.

Having made this remark by the way, Mr. Burke pursued his arguments.

Here their Lordships, he said, would see the necessity of different rules of evidence when *Christians* and when *Gentoo*s were to be examined. What gained the former *credit*, was their personal appearance in Courts, and the delivery of their testimony upon *oath*.

But the appearance of a *Gentoo* at their Lordships' bar would be the precise circumstance that would take from him all credit, render himself *infamous*, and his testimony consequently inadmissible.

But even in *India* the *personal appearance* of *Gentoo* witnesses was not to be expected or procured, when those witnesses were *females*. For it would be *infamy* and *degradation* to a woman of *character* or *respectability*, of the *Gentoo* religion, to be *seen* in a court of law. And therefore even Sir Elijah Impey himself, in a code of rules or laws drawn up by him for the *Adawlet* Court, was obliged to make the rules of English jurisprudence give way to the adherence inflexibly observed by the *Gentoo*s to the *religious* and *civil* institutions, customs or prejudices of their country. He therefore appointed certain females to go to the Ladies who scrupled to appear in Court, and take their *declarations* even *without an oath*.

Their Lordships then surely would not require of *Gentoo ladies* what Sir Elijah Impey had found by experience was impracticable; and therefore they would receive *their* testimony, though not delivered *personally*, or even upon *oath*. If their Lordships were to adhere to the English practice when the declarations of *Gentoo ladies* were to be given in evidence, they would *outlaw*, and, as it were, *excommunicate one whole sex in Indostan*.

The legal evidence of *Gentoo ladies* was either their examination taken down by some females appointed for that purpose, or papers signed and sealed by them, and sent to the proper tribunal.

Such was the letter sent by Munny Begum, and as such he humbly offered it to their Lordships, as evidence which he was not precluded from giving by their last decision, as it stood upon different grounds from those of the accusation brought by Nundcomar, and which the Managers were not at liberty now to give in evidence.

The Counsel for the prisoner objected to this evidence; he said it was part of those minutes which their Lordships had resolved not to admit.

PART II.

This objection was admitted, and their Lordships would not suffer the letter of Munny Begum to be read:

The Managers then desired that Mr. Francis might be examined. Their object was to prove the delivery of this letter to the Council, and the behaviour of Mr. Hastings when it was read. Mr. Francis was accordingly sworn; but as he said the examination of Nundcomar, &c. had been taken down in *writing*, the Managers were not suffered to examine him to the *contents* of the written documents, which could be more accurately ascertained by the production of those documents themselves; and as the Managers were precluded by their Lordships' decision from producing those documents or minutes, they said they had no further question to put to Mr. Francis, who therefore withdrew.

The Managers then caused to be read, a letter written by Mr. Hastings, in which he referred almost in every paragraph to some of the proceedings of the Council respecting the charges brought by Nundcomar, and the minutes which their Lordships had refused to receive as evidence.

Mr. Burke said, that as often as he should think that he had *new* ground for the admission of those minutes, he would humbly press their Lordships to receive them. He conceived that the letter which had been just read, afforded him that *new* ground; for it could not be understood, if the minutes to which they every instant referred, were not read; he therefore desired that the minutes of the 13th of March might be read.

But this was over-ruled. Their Lordships, not considering this as *new* ground, adhered to their former decisions.

Mr. Burke then caused the minutes of other consultations to be read, from which it appeared that Sir John Clavering, Colonel Monson, and Mr. Francis, so far from wishing him to submit to the mortification of meeting Nundcomar face to face, proposed that, if he pleased, he might absent himself from Council, and that so far from being his accusers, and using Nundcomar only as an instrument, these three Gentlemen had resolved, that if the witnesses produced in support of the charges against Mr. Hastings did not make good the same, they should be prosecuted with all the rigour of the law.

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From these minutes also it appeared that Mr. Hastings frequently dissolved the meetings of Council, to prevent his colleagues from proceeding in the enquiry against him.

From a letter written by Mr. Hastings it appeared, that though he descended, in a vindication of himself to the Court of Directors, to take notice of such a trifling circumstance as a charge about a *palanquin*, he took not the least notice of the *serious* charge contained in Munny Begum's letter, namely—that he had taken from her a BRIBE OF TWO LACKS OF RUPEES.—It appeared also that he did not in the smallest degree attempt even to insinuate that this letter was a *forgery*.

Mr. Burke finding it was then *five o'clock*, said he would not trouble their Lordships with any more evidence this day; but that on the morrow he would cause Mr. Goring to be examined.—This Gentleman was a Commissioner sent by Mr. Hastings to procure answers from Munny Begum to certain queries framed by himself.

Their Lordships hearing this immediately adjourned.

FORTY-FIFTH DAY.

THURSDAY, May 28.

Mr. Grey, on the part of the Commons, said, that before he should call Mr. Goring, he would give in evidence a Commission made out to that Gentleman by the Council at Calcutta, to go to Moorshedabad and institute an enquiry relative to certain *embezzlements* of the public money, which were said to have taken place under the administration of Munny Begum.

Mr. Law objected to the reading of this Commission, because he said it did not appear to have any relation to the charge then before their Lordships, and ought not to be admitted as evidence, unless it could be so connected with Mr. Hastings and the charge, as to be taken out of the decision to which their Lordships had lately come.

Mr. Grey observed, that this objection was one of the bad consequences which grew out of the principles laid down by the learned Gentleman—namely, to judge of the *effect* of evidence before it was read, and upon that effect to ground a plea that it was *inadmissible*.

Mr. Anstruther insisted that the evidence to which Mr. Law objected, did not come within the principle of their Lordships' decision. The principle, if

he understood it right, was this—that a paper which was not evidence *per se*, could not be read, unless it was made to appear that it was connected with something said or done upon it by the prisoner, in which case alone it could be given in evidence.

But that principle did not apply to the paper offered to their Lordships by the Hon. Manager: it was evidence *per se*; for it was part of a consultation in which Mr. Hastings had had a share.

The Lord Chancellor concurred in opinion with the Managers, and the commission and consultation were accordingly read.

The result of Mr. Goring's enquiries, in consequence of this commission was afterwards read, and it appeared that Munny Begum had admitted that she had given large sums to Mr. Hastings and to Mr. Middleton, to the amount of three lacks of rupees, as allowances for entertainments.

The report made by Mr. Goring having been afterwards read at the Council Board, Mr. Hastings moved, that certain queries be drawn up in writing, and sent to the Begum; but at the same time he proposed they should not be delivered to her by Mr. Goring, or in his presence, alledging for the ground of his objection to that gentleman, that the Begum stood so much in awe of him, knowing him to be supported by the majority of the Council, that she would not dare to speak her mind freely, if he was within hearing of her.

The rest of the Council agreed that the queries should be committed to writing, and delivered by some gentleman whom Mr. Hastings had named. But they insisted at the same time, that Mr. Goring should be present at the delivery of the queries. However, to remove all ground for a suspicion that the Begum might be awed by any one, the majority of the Council proposed, that not one of the Commissioners should speak a word to her, but barely deliver the queries, and afterwards bring back her answers in writing.

To this proposition it appeared that the Council agreed.

The queries proposed by Mr. Hastings, and to which the Begum was to answer, admitted the receipt of The money, at least it did not deny it; and went only to these points—Whether any application had been made to her on his part for money?—Whether the account

account she gave was the consequence of terror or influence, or was dictated by her own free will?

The Commissioners proceeded to Moorshedabad with the queries, and sent back the answers under the hand and seal of the Begum.

The Managers were going to give those answers in evidence, but were interrupted by Mr. Law, who objected to the production of them. He said the Hon. Managers must connect them with something said or done by Mr. Hastings either before the queries were sent, or afterwards in consequence of those answers; otherwise they could not be evidence, and the Managers were precluded by their Lordships' decision from reading them.

This produced a tedious and dry debate about the admissibility or inadmissibility of evidence. The Managers contended that Mr. Hastings having agreed to send the queries, the answers to them were so connected with his own act, that they ought to be received in evidence.

Mr. Law maintained that this was a monstrous proposition. To refute it, he supposed a case—that a man was accused of having committed a robbery, at a certain specified time—that on being accused, he declared he was at that very precise time in the house of another man. He supposed that on application to that other man, it appeared that the person accused had not been in his house. Mr. Law then asked triumphantly, if it was possible that any one should contend that the answer given by that other man, contradicting the declaration of the accused, could be admitted as evidence that the latter was guilty of the robbery?

The Lord Chancellor said, that such an answer would not be conclusive evidence of guilt, but it would be a circumstance against the person accused.

Mr. Grey observed, that so far were the Managers from being barred from giving the Begum's answers in evidence, because the prisoner had not acted upon them *afterwards*, that upon that very circumstance of his not having acted upon them, or done any thing in consequence of them, the Managers intended to draw a strong presumption of his guilt.

Mr. Sheridan having supported the opinion of Mr. Grey, said, that Mr. Hastings had done something *before* the answers arrived, which connected them

with him, and made them good evidence.—That something, he said, was, that Mr. Hastings, as it appeared from the minutes of the consultation, had agreed that the queries should be sent.

Mr. Law replied, that Mr. Hastings had consented only on condition that Mr. Goring should not be present at the delivery of the queries: this condition not having been observed, the sending the queries was not the act of Mr. Hastings, but of the Council. The word *agreed*, which appeared in the minutes, by no means meant that the minority had gone over to the majority, and that the opposition to the measure was given up; it meant no more than the words *resolved* or *ordered*, and was descriptive of an act of *Council*, in which Mr. Hastings was not to be supposed to have *voluntarily* acquiesced. That this was the true meaning of the word "*agreed*" in the Council-books, appeared from all the minutes of consultation in the Company's archives.

Mr. Grey maintained that the word "*agreed*" in the consultation on which he was speaking, was descriptive of the *unanimous* acts of the *whole Council*, and not of a *majority* of it. This was evident from the conclusion of a consultation which had been read this very day, where it was stated, that a proposition had been *carried by the majority*.

Mr. Sheridan supported this idea, by contending that it was evident the word "*agreed*" meant the *unanimous* concurrence of the Members of the Council; and it was evident from this circumstance, that a compromise might be fairly concluded to have taken place between Mr. Hastings and the other Members from whom he had at first differed.—Mr. Hastings proposed originally, that Mr. Goring should not be present at the delivery of the queries. Mr. Francis proposed a kind of a middle way; and that was, that Mr. Goring should be present, but that neither he nor any other of the Commissioners, should speak a word to the Begum, lest she should be thought to be overawed or influenced, but that they should barely deliver the queries to her, and bring back her answers under her own hand and seal. In consequence of this kind of middle way, or compromise, the Council was brought to "*agree*" to adopt it *unanimously*, and not merely by a *majority*.

Mr. Plumer, one of the Council for Mr. Hastings, argued for a little time

support of Mr. Law's objection, and saved the judgment of the Lords upon

The Lord Chancellor appeared to think there was no great weight in the objection, and repeatedly asked the Counsel whether they intended to persevere in urging it. The Counsel refused to give it up.

The Lords then adjourned to their own House, to consider of the objection: and returning at a quarter past five o'clock, the Lord Chancellor informed the Managers, that their Lordships had resolved that the Begum's answers *ought to be read*.

They were read accordingly, and then their Lordships adjourned.

FORTY-SIXTH DAY.

WEDNESDAY, June 10.

Mr. Burke requested leave to read an extract of a letter from Charles Goring, Esq. to Warren Hastings, Governor of Bengal, which he wished to produce as evidence, that the prisoner had been guilty of peculation in receiving from Munny Begum a bribe of a lack and a half, under the pretence of an entertainment.

Mr. Law, Counsel for Mr. Hastings, objected to the production of this letter, on the principle, that written testimony could not be adduced in evidence.

The Lords retired to deliberate on this question, and returned in a few minutes with a decision *against the relevancy of the testimony proposed*.

Mr. Burke then offered to produce, *not a copy but the very Persian original of the Munny Begum's letter*, signed by her,—authenticated by the Nabob her son,—attested by the seal of Charles Goring, Esq. who was ready to swear at their Lordships bar to the authenticity of the letter.

Charles Goring, Esq. was then brought to the bar, and Mr. Burke requested that the following question might be put to him: "I desire to know whether any conversation passed between you and the Munny Begum, relative to the lack and a half which she gave to Mr. Hastings?"

To this question, as irrelevant and nugatory, the Counsel for Mr. Hastings objected.

Mr. Burke replied, that nothing could be more pertinent than the question—nothing stronger than the evidence proposed: that this Persian letter was the most complete testimony which a woman could give in India, a

country where an oath is never administered to women.

This fact, however, the Counsel for Mr. Hastings were disposed to controvert, and mentioned in particular the case of *Dara Begum*, who was examined upon oath by Judge Chambers.

In spite of this solitary example of a female oath, which Mr. Burke affirmed had been extorted by force, he contended that in India no woman above the very lowest class was ever seen in public; and that he could produce several instances of women, who, rather than be seen by a man, had put themselves to death. The original letter, therefore, of the Munny Begum, which he now produced to their Lordships, was the very best evidence which could possibly be obtained from a woman in India, according to those principles of honour which from time immemorial have obtained in Hindostan, and which the legislature of this country had been forced to respect. "We have armies," said Mr. Burke, "we have fleets to destroy, to ravage, to depopulate that miserable country; but the arm of injustice is not powerful enough to eradicate those inveterate prejudices which have sunk into that second nature, custom."

Mr. Burke then called Major Scott, who was examined as to a paper given in to the Committee of the House of Commons a few years ago; but his evidence not meeting the Hon. Manager's wishes, he called the Clerk of the Commons to prove that the Persian letter, together with the translation of that letter, was the same which had been presented to the Committee of the House of Commons on the 8th of May 1782.

Mr. Burke next proposed to read the *Charge of Bribery* against Warren Hastings, Esq. by Rajah Bundas.

The Counsel for Mr. Hastings contended, that the Honourable Manager ought first to inform their Lordships for what purpose the paper containing that charge should be produced.

Mr. Burke replied, that it was produced in order to infer from the demeanor of Mr. Hastings, when he was made acquainted with that charge, a proof of his guilt.

The Lord Chancellor said, that his demeanor ought first to be proved.

Mr. Burke replied, that the Managers would pursue the mode pointed out by their Lordships, but that they could not help considering it as *preposterous*.

This

This word brought up Lord Kenyon, who said that he could not patiently suffer a word of that import to be applied to any proceedings of that House.

Lord Stanhope vindicated the Hon. Manager on this point, observing that it was evident he had no design to say any thing disrespectful of that House; and proposing AN ADJOURNMENT.

Mr. Burke begged leave to explain. The English meaning of the word *preposterous* was equivalent, he said, to the vulgar expression of putting the cart before the horse, which was all that he intended to convey by saying, that the mode of proceeding pointed out by their Lordships was *preposterous*.

Lord Kenyon silently acquiesced in the interpretation given by Mr. Burke.

Satisfied by Mr. Burke's explanation, and fully convinced that the meaning which he attached to the word *preposterous* was purely *English*, their Lordships ordered the Honourable Manager to go on.

Nothing positive in the way of crimination was brought forward, but a paper was called for by Mr. Burke which was to have led to some substantial matter, relative to the charges against the prisoner; but this not being to be found very readily, and it being then near five o'clock, their Lordships adjourned.

FORTY-SEVENTH DAY.

THURSDAY, JUNE 11.

Major Scott was again called by the Managers. He was asked, whether he was not the Agent of Mr. Hastings? This question he answered in the affirmative. He was next asked, whether he had not received *written* instructions from Mr. Hastings for his government in all cases respecting his principal? His answer was, that he had. He was then directed to produce those instructions, and he produced them accordingly. They were in the hand-writing of Mr. Hastings. The Clerk, by order of the Lords, read them.

The agency of Major Scott being thus established, he was asked, whether he had not delivered to a Select Committee of the House of Commons a paper purporting to be a letter from Munny Begum, in which she acknowledged that she had given Mr. Hastings a *lack and a half of rupees* for entertainments. He admitted that he had delivered such a letter; but he did not deliver it as coming from Mr. Hastings, or as in any degree affecting that gen-

tleman. He considered it at the time as a paper of no consequence.—He was then asked, why he had delivered to a Committee of the House of Commons a paper which he considered to be of no consequence.—In reply he said, that as it related to a transaction which had taken place so far back as 1775, he could not have supposed it applicable to the enquiry then before the Committee. Mr. Burke desired then, that the witness would give some reason to shew *why* he had delivered a paper, which he did not conceive to be applicable to the enquiry then before the Committee.—To this question a *direct* answer was not given.—The witness said he did not see at the time of what use so *foolish* a thing could be.

Mr. Burke desired the witness would speak more respectfully of a proceeding instituted by the House of Commons; a proceeding set on foot for the purpose of ascertaining what acts of corruption and oppression had taken place under the administration of a Governor-General of Bengal.—Such was the proceeding which the witness presumed to call a *foolish thing*. Major Scott said, he did not mean to apply this expression to any proceeding of the House of Commons; he applied it solely to the subject of the Begum's letter.—He was asked, whether he had read the paper he delivered to the Committee. He said he might have read a *part* of it, but he did not think that he had read the *whole* of it.—He remembered that in what he had read of it, the Begum complained that Mr. Goring had used her harshly to make her sign some paper, or accounts.

The Hon. Manager asked, whether he had not delivered the letter in question for the purpose of lessening the credit of Mr. Goring's evidence, which he knew to be against Mr. Hastings?

Mr. Law, Counsel for the prisoner said it was nothing to the present trial with what view the paper had been delivered, as it was clear, from what the witness had said this day, that he had not presented it in the name, or in the behalf, or with the knowledge of Mr. Hastings.

Mr. Burke insisted that he had a right to ask, what was the object for which the witness had delivered the paper in question; a paper in which there was an acknowledgement, that a *lack and a half of rupees* had been given to Mr. Hastings.

Mr. Law insisted, that unless a prosecution

ector could establish in evidence the charges brought by him against a defendant, it ought to pass for *slander* and *calumny*: it was the *proof* alone that could shew the charges were not *slandrous* and *calumnious*.

Mr. Burke replied with much indignation, that he was astonished the learned gentleman dared to apply such epithets to charges brought by the COMMONS OF GREAT BRITAIN, whether they could or could not be proved by *legal* evidence. It was very well known that many *facts* could be proved to the satisfaction of every *conscientious* man by evidence, which, though in its own nature good and convincing, would not be admitted in a Court of Law. But it would be a strange thing indeed, that a charge supported by evidence which was every thing but *legal*, should be said to be *slandrous* and *calumnious*, merely because certain rules of law declared that evidence not to be admissible in *law*, which would carry conviction to the breast of every man who read it.

The evidence offered by the Managers was not fabricated by them; if it was *slandrous*, the slander was upon *record*, in the archives of the East-India Company, from which the Commons had taken it.

Mr. Law said, he did not mean to apply to any proceeding of the House of Commons, the terms *slandrous* or *calumnious*; but he had the authority of the House of Commons to declare, that the Hon. Manager had used *slandrous* and *calumnious* expressions not warranted or countenanced by the House.

Mr. Fox took fire at this assertion. He said, it was highly irregular and indecent in an Advocate, to allude to any transaction that had taken place within the walls of the House of Commons. But it was still more indecent to allude to it for the purpose of *misstating* and *misrepresenting* it. He said, that when their Lordships would do the Managers the honour of looking into the Journal of the House of Commons, they would find nothing there that could warrant the expressions which the learned Counsel had presumed to drop. The House of Commons had not used one single word that could in the most distant degree be construed to convey the idea thrown out by the learned gentleman. The dignity of the House which he had the honour to represent at their Lordships'

bar, would not suffer an expression to pass unnoticed, which charged the whole body of the Commons with having sent up slanders to the House of Lords in the shape of charges. As little would it suffer any man to torture its Journal into a libel upon one of its own Members; and still less would it suffer its Deputies to be stiled *slanderers* and *calumniators*, merely because they offered in evidence those very documents, on the authority of which the Commons had pronounced the charges to be well-founded, and had sent them to their Lordships as articles of impeachment against the prisoner. He insisted, therefore, that their Lordships should give their opinion on the expressions used by the learned advocate.

Mr. Law replied, that he knew it was not for him to allude to any thing that had passed in the House of Commons, unless he had been made acquainted with it in a particular way; and even *then*, he was to mention it as a thing that he had *heard*, rather than as a thing which had actually passed in an assembly, with whose proceedings it was proper to suppose he had no means of making himself acquainted. It was from the mouth of the Hon. Manager himself, at their Lordships' bar, he had heard what had passed in the House of Commons; and it was from the circumstance of its having been stated by him, that he had ventured to mention it.

Mr. Fox said this was a new misrepresentation, for the Hon. Manager had never said a word at the bar of their Lordships' that could convey an idea that the Managers had used *slandrous* and *calumnious* expressions against the prisoner.—Mr. Fox said afterwards, that he would not consent to proceed in the trial, until their Lordships should have given an opinion respecting the expression used by the learned Counsel. If their Lordships should decline giving an opinion, he must beg leave to return to the House of Commons for fresh instructions.

The words imputed to Mr. Law were taken down and read to him, and he acknowledged that they were pretty nearly the same that he had used.

The Lords were going to retire to take the words into consideration—but the Lord Chancellor said that with which the Managers were satisfied. He said that it was contrary to order in the Counsel to advert to any thing that had passed in the House of Commons; and

and that it was *indecent* to apply the terms *flander* or *calumny* to any thing that was said by their authority; and that such expressions must not be used.

The Managers then went back to the examination of Major Scott. They asked him again what he conceived would be the effect, with respect to Mr. Hastings, of the production of the paper which he had delivered to the Select Committee of the House of Commons, though he thought it was a paper of no consequence?

Mr. Law objected to the question, because he said it was absolutely immaterial to the trial in which Mr. Hastings was at issue with the House of Commons, what Major Scott conceived about the meaning or effect of a paper not before their Lordships.

The Managers however persisting in their question, the Lords adjourned to the Chamber of Parliament to take it into consideration. After about an hour's absence they returned to Westminster-hall, and the Lord Chancellor informed the Managers that their Lordships had resolved that the question ought not to be put.

The Managers then pursued other grounds to entitle them to read in evidence the papers delivered by Major Scott to the Select Committee.—They proved from the Major's own mouth that he had appeared before the Select Committee in the capacity of the *agent* of Mr. Hastings; that he never told the Committee that he attended as a *private* gentleman; that he delivered the letter in question of *his own accord* and *unasked*.

The Managers contended, that under this evidence they were entitled to read the letter, as it appeared now to have been delivered by the prisoner's *own agent*, acting under his instructions.

Mr. Law replied, that the instructions did not go to this letter; and that as there was no proof that it had ever been seen by Mr. Hastings, it could not be brought in evidence against him.

Mr. Burke insisted, that the Managers were fully entitled to read the letter, for they had traced the delivery of it to the avowed agent of Mr. Hastings, who, by having delivered it *unasked*, most probably intended to serve him by the production of it. They had proved also yesterday, that Mr. Baber, holding a public office under the Company, had sent a *translation* of this letter by the *post*, and kept a copy of it: It was always to be presumed, and so it was considered in

law, that when it was proved that a letter had been put into the post-office, it had been afterward delivered according to its address. On this presumption they had sent a notice yesterday to Mr. Hastings, to produce that translation sent to him by the post; and they called upon him now to produce it.

Mr. Law desired the Hon. Manager would first prove the receipt of it, before he called upon Mr. Hastings to produce it.

Mr. Burke said, he could not prove positively the actual receipt of the letter by Mr. Hastings, but still it was fairly to be presumed he had received it; and the suppression of it was a crime in the prisoner, who ought to have transmitted it to the Court of Directors. However, to supply the want of this *positive* proof, Mr. Burke said mention was made of this letter in the 11th Report of the Select Committee of the House of Commons, and it was stated as the ground of a criminal charge against Mr. Hastings. Having premised this, he asked Major Scott, whether he had not sent the 11th Report to India to Mr. Hastings. The Major acknowledged that he had sent it, but was not able to say that it had reached him. He had sent it with a letter; and Mr. Hastings afterwards acknowledged in *one* letter the receipt of many from the witness; but whether that which accompanied the 11th Report, was one of those so acknowledged to have been received, he was not able from memory to ascertain.

The witness, in answer to a question put to him by Lord Porchester, admitted, that Mr. Hastings had not found fault with him for having delivered the paper in question.

Mr. Burke then caused the general powers given by the prisoner to Major Scott, to be read; and it appeared that they were very *broad* indeed, and authorized him to act in *EVERY THING* that concerned his HONOUR and CHARACTER, or the DIGNITY of HIS ADMINISTRATION.

Mr. Burke then observed, that having established this agency—having shewn that its powers were absolutely *unrestrained* and *unlimited*, except merely as to a *resignation* of the government—having proved that this agent had delivered the letter in question, in the capacity of agent to the prisoner, into the hands of the Select Committee of the House of Commons—having proved that the Report made by that Committee

les, containing animadversions upon the subject matter of that letter, had been sent by this agent to Bengal for the perusal of the prisoner—and having also proved that Mr. Baber had sent to the prisoner by *post*, a translation of this very letter—the Managers, he contended, had now laid sufficient grounds to intitle them to read it in evidence.

Mr. Law maintained a contrary opinion; but as he had argued the case sufficiently yesterday, he declined the talk of re-arguing it this day.

The Lords then adjourned to the Chamber of Parliament to debate this question; but as it was then *half past* four o'clock, they did not return to Westminster Hall.

FORTY-EIGHTH DAY.

WEDNESDAY, JUNE 17.

As soon as the Peers had taken their seats the Lord Chancellor said, "Gentlemen Managers for the House of Commons, and you Gentlemen who are of Counsel for the defendant, the Lords have resolved that the Persian Letter written by Munny Begum, and the translation of that letter, which were offered to be read in evidence on the last day, *ought not* to be read. Gentlemen of the House of Commons, you will proceed to make good your Charges."

Mr. Burke, after consulting a short time with Mr. Fox, addressed their Lordships.—He lamented that the decision of their Lordships, thus nakedly communicated, without the reasons on which it was founded, was to the last degree perplexing to those who were to conduct the prosecution. He made no doubt but the decision was founded upon some good *technical* principle of law; but as their Lordships had not been pleased to state what was that principle, the Managers were left to grope for it in the dark; and being unable to ascertain precisely the nature of it, were reduced to the necessity of *guessing* what it might be.

He said, it would be of great advantage to the Managers to be made acquainted with this principle, as it would serve to guide them in the future conduct of the Impeachment, by shewing them what paper might be considered by their Lordships *technically* as evidence, and what *not*.

At present the Managers, who knew only what might, in *reason* and *plain sense*, be considered as good and con-

clusive evidence, but who were totally uninformed respecting that kind of evidence which might be *technically* inadmissible, though fully *convincing* in the eye of *reason*, might probably give their Lordships a great deal of trouble, though very unintentionally, by offering over and over again, such evidence as the conscience and understanding of men not *technically* learned would not reject.

In the case on which their Lordships had last decided, the Managers offered in evidence a paper proved to have been written by Munny Begum, and to have been transmitted to Mr. Hastings. They offered also a translation of that paper, delivered to a Committee of the House of Commons by the very agent of Mr. Hastings.—They proved that these papers had been sent to the prisoner, in the 11th printed Report of that Committee; and that, when he drew up his defence, he must have had them before him.

That papers so substantiated should have been rejected by their Lordships, Mr. Burke said, must be a matter of astonishment to all the thinking part of mankind, who should happen to be unacquainted with the *technical* grounds on which their Lordships had resolved not to receive these papers. It was his duty, however, to submit to their judgment, and to presume that it was just, even though in his own private opinion he should think it humiliating to the House of Commons, and to the nation.

Left, as he was, without any intimation of the grounds of the decision, he could, as he had already observed, only *guess* at them.

He might guess then, that the reason which had induced their Lordships to reject those papers as evidence against the prisoner, was, that Major Scott, the agent of Mr. Hastings, had declared that when he delivered them to the Committee of the House of Commons, he delivered them without any previous communication on that subject with his principal, and without any authority from him.

Here he begged their Lordships would take care how they encouraged a mode of proceeding which might lead to very bad consequences.

In the case of Mr. Hastings, he said, there appeared to be a system of *disavowals*. The prisoner once appointed an agent, who, in *his* name, made a formal

formal resignation of the Government of Bengal. But the principal afterwards disavowed this act of his agent, and strenuously resisted it, though the ruin of the British empire in the East might have been the consequence of it.

At another time he delivered at the bar of the House of Commons, (*as his own*) a written defence against the charges then pending against him in that House. But afterwards at their Lordships' bar, he *disavowed* this defence, and produced evidence to prove that it had been drawn up by others, and not by *himself*, and that therefore he ought not to be accountable for the contents of it.

In the case immediately before their Lordships, it had appeared in evidence, that Major Scott was the agent of the prisoner, and that his powers were as unlimited as words could make them, except in one point only. This agent delivered to the Committee of the House of Commons the papers of which he was then speaking, certainly with some view, and probably to serve his principal, for he delivered them *unasked*. But now he disavowed all authority for such delivery, and declared, that, though by his instructions from the prisoner he was to have consulted Mr. Sullivan and another gentleman in all cases relating to the prisoner's interest, he had actually delivered the papers in question without having consulted them at all: and thus did he urge to their Lordships a breach of his instructions, as a reason that should induce them to think, that in delivering these papers to the Committee he ought to be considered as acting in his private character, and not in his character of *Agent* to Mr. Hastings; and that consequently *this* act of his ought not to be binding upon his principal.

How far that reason ought to operate, and whether it ought in fairness to screen the prisoner from the consequences of this act of his *agent*, he said he would leave the impartial world to judge. To that tribunal he resigned it, with this additional observation; that their Lordships had heard Major Scott declare upon oath, that to the day on which he was last examined, Mr. Hastings had never once disavowed the act in question done by his agent, or once censured or found fault with him for having done it.

PART II.

Having premised these observations, Mr. Burke said, he would next offer to their Lordships the minutes of the consultation at which it was resolved, by Mr. Hastings and the other Members of the Council at Calcutta, that Munny Begum and Rajah Gourdas should be restored to the officers under the Nabob of Bengal; from which they had formerly been removed by the Council; when Mr. Hastings was in the minority.

These minutes were accordingly read; and the appointment of these two persons proved.

He next gave in evidence a letter from the Court of Directors, in which they censured, in the strongest terms, the restoration of Munny Begum and Rajah Gourdas.

After this, Mr. Burke offered in evidence the accounts kept by Rajah Gourdas and the Begum, and transmitted to Calcutta, of the expenditure of the Nabob's revenue.

Mr. Law objected to this evidence; he said, that their Lordships had already pronounced upon it, and declared it to be inadmissible.

Mr. Burke insisted that the evidence then offered was not liable to the objection urged against it by the learned Gentleman. It consisted of *official* accounts, kept by the proper officer; regularly transmitted to Mr. Hastings at Calcutta, and by him sent home to the Court of Directors.—With this evidence Mr. Hastings was clearly connected, as they had actually passed through his own hands.

Mr. Fox contended, that the accounts offered in evidence ought to be received: The nature of them, he said, was this—Rajah Gourdas, in giving an account of the expenditure of the public money in his department, was endeavouring to exculpate Mr. Hastings from the suspicion of having taken bribes: but though acting with that view, he stated that a lack and a half of rupees had been paid by him to Mr. Hastings.—Now either this circumstance so stated was either true or false. If true, it would prove that the prisoner had actually taken a bribe, or present, to that amount.—If false, it would prove that Rajah Gourdas had invented a calumny against the Governor-General; and for the purpose of covering an embezzlement of the public money, charged Mr. Hastings, in his accounts, with a sum which

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which the latter had never received.— If the first was true, it would easily account for the Rajah's restoration to office;—if it was false, and that no money had been paid to Mr. Hastings by Rajah Gourdas, as stated in the accounts, then it would appear that Mr. Hastings had appointed a man to a place of great trust, after he had himself full reason to be convinced that he had embezzled the public money.

Mr. Law replied, that Mr. Hastings had restored Rajah Gourdas at the express desire and request of the Nabob; and it would therefore be a great hardship indeed, if an act of kindness done to a great Prince, should make Mr. Hastings answerable for the evil acts done four years before by the person restored.

Mr. Fox admitted, that it would be hard indeed if such was to be the consequence of an act of *KINDNESS*. But the question was, Could this be considered as *such*?—Could any man of common understanding pretend to say that it was an act of *KINDNESS* in Mr. Hastings to restore a man who had brought a *false* charge against him, and who, to support that *false* charge, had made out *false* accounts?

The world must be convinced, that in this case Rajah Gourdas had either told a truth or a falsehood of Mr. Hastings. If he had told a truth, their Lordships ought to suffer the evidence of it to be read: if he had told a falsehood of him, Mr. Hastings, who, before he restored him, was fully apprized of the fact, was answerable to his country for having restored a man to the very same important situation in which he had not only embezzled the public money, but had made out false accounts to traduce the character of the Governor-General.

Mr. Fox said he would leave it to their Lordships to determine whether this could possibly be considered as an act of *KINDNESS*; and whether it was not much more likely that it was a criminal connivance at embezzlements, so considerable a share of which was stated in the accounts, whether or not their Lordships would judge, to have fallen to his own share.

Their Lordships withdrew to the Chamber of Parliament, at half past two o'clock, to consider whether the evidence offered was or was not admissible. They debated, in their own House, till four o'clock, and then drew

up a question upon it, and put it to the twelve Judges for their opinion.

The Judges said, the question was of importance, and therefore they begged to consider it. Their Lordships granted it, and adjourned the further proceeding in the trial to the Wednesday following.

Forty-Ninth Day.

Wednesday, June 24.

The Lords having been employed in debating some proposition in their own House, did not appear in Westminster-hall till two o'clock.

The Peers being then seated, and the prisoner having been brought to the bar, the Lord Chancellor, from the woolstack, informed the Managers, the prisoner, and his Counsel, that the House had resolved, "that the accounts offered in evidence on Wednesday last, *could not be read*."

His Lordship then desired the Managers would proceed with their evidence.

But before any of them had risen to speak,

Lord Portchester addressing the House, said, that he had drawn up two questions, which he wished to put to the Judges in the presence and hearing of those who conducted the prosecution, and of the prisoner and his counsel, who were interested in the defence. He was then proceeding to read the questions, when the Lord Chancellor interrupting him, said, that if his Lordship had a motion to make, the discussion of it could not take place in Westminster-hall, but in the Chamber of Parliament, to which it would be necessary that House should adjourn.

The Lords accordingly adjourned almost immediately after they had taken their seats to their own House, where they continued debating till near six o'clock, when, without returning to Westminster-hall, they sent a message to the House of Commons that they had adjourned the further proceedings in the trial to *Tuesday*.

Fiftieth Day.

Tuesday, June 30.

The result of their Lordships' deliberation on the questions which Lord Portchester was going to put to the Judges, when he was stopped by the Lord Chancellor, and to discuss which the House adjourned to the Chamber of
Par

Parliament, was not communicated to the Managers or the prisoner. As neither of those parties had put the questions, or called for judgment upon them, the whole business was considered as of a nature foreign to the trial, and confined solely to the internal regulations adopted by their Lordships*.

After the usual proclamations, and the appearance of the prisoner, the Lord Chancellor called upon the Managers to proceed.

Mr. Fox then informed the House, that the Managers desired the clerk would read a letter, printed in their Lordships' *Appendix* to the Trial, written by Mr. Goring, containing accounts given by Munny Begum of presents made by her to Mr. Hastings†, which letter was sent to, and received by the prisoner, whilst he was Governor-General.

Mr. Law said, that if the Hon. Manager meant by the production of those accounts to prove that the contents of them were true, he would most certainly object to the admission of them in evidence.

Mr. Fox said, that whatever might be the use which he intended to make of the accounts, he had an undoubted right to give them in evidence. The question whether they were admissible or not, came now too late; for their Lordships had already admitted them, and caused them to be printed with the rest of the evidence: they were actually before the House. To support his opinion by the highest authority, he said, that on the eleventh day of the Trial, the 29th of February 1788, the consultation in which the letter that he

now wanted to produce was recorded, was given in evidence to prove an article in a different charge from that which was at present under the consideration of the House. To save time, a *part* only of the consultation was read, because it was very long; but their Lordships had caused the *whole* of it to be printed *as read*.

He remembered well, he said, an observation that was made at that time by the noble and learned Lord on the woolsack, for whose opinion he at all times entertained a very great respect, but more particularly when it was given in a solemn and *public* manner, so as to be placed beyond the possibility of misconception or misrepresentation. The observation to which he alluded would, he said, be decisive on the present occasion.

When some objection was made by the Counsel for the prisoner relative to the consultation, in which the accounts that the Managers wanted this day to produce, were entered, the noble and learned Lord making use of an expression undoubtedly very strong, but not more strong than true, said, "that though only a *part* of the consultation was read, the *whole* of it was before the House; and the Lords *could* not, even if they *would*, shut their eyes to it, but must suffer either party to read any part of it, for the paper in question was actually in evidence."

This *dictum* of the learned Lord, whose opinion necessarily carried weight with it, received additional weight from the publicity with which it had been delivered. For undoubtedly opinions delivered *publicly* always carried with

* The substance of the determination of the Lords on the preceding day (June 29), after going into a Committee "to enquire into the usual method of putting questions to the Judges, and receiving their answer in judicial proceedings," reading a great number of precedents, and a long debate, was, "That the proceedings on the trial of Warren Hastings, Esq. had been regular, and conformable to precedent in all trials of a similar nature."

† The following are the particulars of the articles of presents inserted in the above accounts.

	Rupees.
" At Cossimbuzar, through Nur Sing Baboo, youngest brother to Canto Baboo,	
" for entertainments when a Governor arrives at Moorsheadabad, —	150,000
" On account of investing the Begum with the administration, in the form of a	
" Nuzzerana, at Calcutta, viz. through Kauntoo Baboo, from the Begum's private	
" treasury, — — — — —	100,000
" Through Maha Raja Nundcomar, at the written desire of the Begum, on the	
" 12th of Assur, in the Bengal or Fusil year 1179," — — — — —	100,000
Total,	350,000
Sterling,	£. 43,500
	them

more authority than those that were given in *private*. Nothing contributed more to maintain the purity of a Judge's character, than a public delivery of his opinions; for in that case they were given subject to the *comments*, the *praise*, or the *censure* of the *public*; and therefore a Judge so delivering opinions, and under the apprehension of public censure, would always take care to weigh well every *dictum* which he knew he could not lay down without being liable to see himself arraigned for it at the tribunal of public opinion.

The *dictum* of the learned Lord which he had just quoted had been canvassed, in it made the subject of public comment; but he believed there was not a man who had heard it, who had not declared it to be founded in law and in reason.

Mr. Lawr marked, that the consultation in which the accounts in question were entered, contained many extraneous matters, in no degree connected with the article of impeachment laid before their Lordships; and therefore he could not see any ground on which those parts of the consultation which were foreign to this article could be offered in evidence, except on that *contiguity* or, because they were in the same book. But as this would be a bad ground, or rather no ground, he thought that the House would adhere to the general rule of law observed in all courts; which was, that when a counsel suffered a paper to be read, in which there were articles that might be considered as foreign to the point in issue, or of a nature that would, and ought to render them inadmissible in evidence, the consent of the Council could be taken with this limitation and reservation, "that he should afterwards be at liberty to object to the reading of such parts of the paper as he could conceive to be irrelevant."—The accounts which the Hon. Managers wanted to introduce by reading the consultation in question, had been already offered four times to their Lordships, and as often declared by them to be inadmissible. And they were so in their very nature; for they were not debated, or given under the sanction and obligation of an oath.

Mr. Fox observed, that there was no part of the learned Counsel's speech which called for an answer: he said

that he would, however, make one remark upon a single part of it. The learned Counsel had said, that the only ground on which the Managers could desire that every part of the consultation should be read, in which he would insinuate there were many points that were irrelevant, was that of *contiguity*. In answer to this he would say, that the Managers desired that a part of the consultation might be read now, because the *whole* of it had been already declared by their Lordships to be in evidence.

The Lord Chancellor said, that the general rule of practice was, that if a paper containing both relevant and irrelevant matter was admitted by the Court, the bare admission of it did not preclude either party from stating, in a later stage of the business, any objection that might occur to the parts which should be thought to be irrelevant. If he had said any thing on the eleventh day of the trial that militated against this rule, he was certainly wrong. He did not mean, however, to say, that he had given any opinion, or that he meant to give one now, about the relevancy or irrelevancy of any part of the consultation.

Mr. Fox said, he was glad the learned Lord did not make it necessary that he should defend his Lordship's *dictum*, even against his Lordship's opinion. The *dictum* was founded, as he had said before, in law and in reason, and was so *self-evident*, that it needed no defence.

Mr. Burke observed, that no *dictum* of any Judge was ever more defensible; but he would imitate the prudent caution of his Hon. Colleague, and not presume to defend a document, which the learned Lord who had delivered it was so much better able to defend. He had read of a Frenchman who, being at *Venice*, defended the government of that republic against the censure which some other foreigner was bestowing upon it. The next day he was taken up and carried before some of the Senators, who reprehended him for having presumed to undertake the defence of a government which knew best how to defend itself. They then ordered a curtain to be drawn up, and shewed to the astonished Frenchman the dead body of the person with whom he had had the conversation for which he had been apprehended. The body was hanging

hanging by the neck. One of the Senators then said to the Frenchman, "This man has been hanged for having dared to censure the government of Venice, and you shall be hanged if ever you presume again to undertake its defence." Warned by such a lesson, Mr. Burke said he would not attempt to take out of the hands of the learned Lord the defence of a doctrine to which no one was so equal as the learned Lord himself.

The Lord Chancellor then framed the question which he was to put to the House for their opinion—and he stated it thus:—"The consultation having been once read, and no objection having been made to it at the time by the Counsel for the defendant, are the Counsel thereby barred ever after from making any objection to any part of it?"

Mr. Fox said, this was not the ground on which the Managers desired that a particular part of the consultation might be read—the true ground was, that it was already in evidence before their Lordships; that it had been entered by them as *read*, though for shortness, a *part* of it only had been in reality read; that it having been so entered, the Managers now desired no more, than that what had been indistinctly read before, might this day be read accurately, distinctly, and at length.

The Lord Chancellor then framed the question this way—"A *part* of the consultation having been admitted and read, are the Managers entitled from that circumstance to read the *whole*?"

Mr. Fox said, he was extremely sorry that the learned Lord did not understand him. The question as then framed by his Lordship was precisely the reverse of what he had said. He did not say that because a *part* had been read, he might read the *whole*; but that the *whole* having been read already, and being in evidence before the House, he might be now at liberty to read a *PART* of that whole. He grounded his claim upon the well-known axiom—*omne majus continet minus*.

Mr. Law was framing the question another way, which would make it an intricate question of *law*, when

Mr. Fox said, he did not as yet stand upon a question of *law*, but merely a question of *fact*.—The way in which he would frame it was, he said, the most simple imaginable, and would enable their Lordships to determine it

in a moment.—It was thus:—"The whole of the consultation having been entered as read already, are the Managers at liberty now to read a part of it?"

The question being thus framed, the Lords adjourned to the Chamber of Parliament to take it into consideration.

In about half an hour they returned, and then the Lord Chancellor told the Managers, that he was commanded by the Lords to inform them, that upon enquiry they found the Managers had inaccurately stated the case, for that their Lordships had ordered nothing to be entered in the Trial *as read*, that had not actually been read; and they at the same time ordered that such parts of papers as had not actually been read, should be printed in an *Appendix*, and not in the body of the Trial.

Mr. Fox said, that if the Managers had been mistaken in point of *fact*, the mistake was very natural; for the learned Lord had himself declared from the woolsack, and his words appeared in the account printed by the authority of their Lordships, that the very paper (which the Managers wanted this day to read) was actually in evidence.

Mr. Burke remarked, that the Managers had reason to complain that a judgment of the House having been given in their favour last year, by which it was declared that this very consultation was actually in evidence before the House; the Managers wanting now to read a *part* of that consultation, were deprived of the benefit of it, and told now that the whole of the paper was not in evidence.

Earl Stanhope rose, as he said, to set the Hon. Manager right. No judgment of the House, he said, had declared the paper in question to be in evidence. The judgments of the House were known by its *resolutions*. The opinion of any individual Lord, however weighty it might be, and however high his rank, was not to be considered as a judgment of the House.

Mr. Burke thanked the noble Lord for the trouble he had taken to set him right. The distinction made by his Lordship was just and proper; he would allow him, however, at the same time, to observe, that when the noble and learned Lord who presided in that House declared, that a paper was in evidence, and emphatically said their Lordships could not shut their eyes against

grant it; and the House hearing this declaration, and without any objection acquiescing in it, it was very natural for the Managers, who knew not upon what principles their Lordships acted or decided, to consider such a judgment of the noble and learned Lord as the JUDGMENT of the HOUSE.

Mr. Fox still desired that the papers which he had mentioned at first might be read. The ground on which he did this was different from that on which their Lordships had just decided. The new ground was, that he was entitled to read those papers, because their Lordships had caused them to be printed in their Appendix.

The Lord President of the Council (the Earl of Camden) said, that their Lordships had ordered every thing that had been received in evidence to be printed in the Trial; but that such parts as had not been read, had been arranged by the clerks, and put into an Appendix. The Managers therefore, in order to entitle themselves to read any part, because it appeared in the Appendix, ought to shew that it had been placed there by order of the House.

Mr. Fox said, this doctrine would place the Managers in a most curious situation indeed. For whenever they should desire that a part of their Lordships' Appendix should be read, the Counsel for the prisoner, and the Managers, must engage in a very singular contest indeed; they must argue, not a question of LAW, whether such a paper ought to be admitted in evidence, but a question of FACT—whether their Lordships had ordered it to be printed? This surely their Lordships could determine without any debate upon it at the bar.

Having said this, he begged leave to state the reasons which he thought should induce the House to suffer the paper printed in the Appendix to be read.—He had always heard that there were two kinds of evidence which ought not to be received: one, which from the very nature of it ought to be considered as incredible; the other, which from certain circumstances it was not thought safe to trust to the eyes or ears of the Jury or Judges. But this day a third kind of evidence had been suggested, namely, that which was not incredible—which it was not unsafe to trust to the eyes or ears of the

Judges, for it had been printed by their order, and for their use and perusal, but which, notwithstanding all this, was not to be received in evidence.

If the paper in question was not fit for the Judges to see or to hear, why had it been printed by their order? If it ought not to be received, it ought not to have been printed. But as it had been printed, it was not unfit for the Judges to read, and therefore it ought to be received this day, and read at the desire of the Managers.

Mr. Burke observed, that an *epilogue* was generally considered as of some use: it contained either *point* or *instruction*. If it happened to contain *neither*, it was useless; and the time bestowed in the composition of it was thrown away and lost.

The APPENDIX printed by the order of their Lordships might be considered, if not absolutely evidence, at least as an *epilogue* to the Trial. It must be supposed then to be of *some* use, and that what their Lordships had directed their clerks to compile, and cause to be printed, was fit to be read, and to throw some light upon the trial. If it was unfit to be read, and was of no use, then it was a waste of the public money to print it; and it was foolish and absurd to make, at a great expence, a compilation of things which were of no use; for it was a true maxim—

STULTUS labor INEPTIARUM.

Either then this appendix was a compilation of papers (made under the authority of the clerks of the House) which ought to be read, or ought not to be read. If they ought to be read, then there was no real objection to the reading of the papers called for by the Managers. If they ought not to be read, then the Appendix was fit only to be burnt.

Earl Stanhope rose to speak to order. He said it was not fit that the House should suffer the Hon. Manager to speak in such a manner of *its orders*. It was not an *orderly* or *respectful* language to say what had been done by the order of their Lordships, *was fit only to be burnt*.

Lord Portchester called the noble Earl to order. He said, the Hon. Manager had been speaking all the time of the Appendix, which had not been made out under the *authority* or *orders* of the House,

Mr. Fox said he feared the nature of the *Appendix* was not properly understood. He, for his own part, considered it as a very important paper; and which derived its importance from this very circumstance,—that it had been compiled by the order of the House, to inform and instruct their Lordships in points respecting the trial, and to enable them to do justice between the public and the prisoner. If he did not view the *Appendix* in that light, he would certainly agree with his Hon. Colleague, that it was a very useless compilation, made without cause, at a great and unnecessary expence; that it had occasioned shameful waste of public money; and that if it was not fit timber to be used in the edifice of justice, it ought to be cut down and cast into the fire. The proceedings of this day, he said, had taught him a lesson, which he would not forget during the remainder of the trial. Hitherto he had, for the saving of time, and for the greater dispatch of business, contented himself with causing *parts* of papers to be read, under the idea that the *whole* was to be entered as read; and that every one was to be precluded from urging any objection to the reading of the whole, or any part of them, in any future stage of the trial, to which such reading might apply. But this day he found that an attempt was made to bar him from re-reading any more of those papers than what was entered of them in the body of the Trial, as having been actually read: so that he must make out fresh ground at every paragraph that he might wish to have read, over and above what appeared to have been entered in the body of the Trial. In consequence of this proceeding, much as he wished to spare the time of the Court, of the Managers, and of the Prisoner himself, he was resolved that whenever he should offer any other paper in evidence, to cause the *whole* of it to be read, however long it should be.

Lord Stanhope was going to make a speech in reply, when

The Earl of Hopetoun reminded his Lordship, that Westminster-Hall was not the place where the *Lords* should debate, and moved that their Lordships should adjourn to the Chamber of Parliament. Their Lordships accordingly adjourned to consider, whether the paper called for by Mr. Fox ought to be read upon this ground—that it was printed in the *Appendix*.

After the Lords had debated some time to determine whether the passage in their Lordships' *Appendix*, offered in evidence by the Managers, ought to be read, they returned to Westminster Hall, and informed the parties interested in the question, that the Lords had resolved, that the bare circumstance of a paper having been printed in the *Appendix*, was not a ground for its being received and read in evidence.

Mr. Burke then observed, that there was *another* ground on which he could entitle himself to read the paper in question; which was, that this paper was connected with the letter of Munny Begum, which was already in evidence. To prove that this was the case, and that Mr. Hastings himself had acted as if he considered it in that light, he desired that the minutes of a consultation held on the 13th of July, 1775, might be read. In those minutes, he said, their Lordships would find that Mr. Barwell had moved, that the whole of the proceedings, in consequence of the commission given to Mr. Goring, should be inserted in the general letter to the Court of Directors, and that they would find at the same time, that Mr. Hastings himself had seconded this motion. It would appear from the minute entered by Mr. Hastings, when he seconded the motion, that he thought every part of those proceedings was necessary to his own justification, and on that account he wished the whole should be inserted in the general letter to the Court of Directors. The Managers, Mr. Burke observed, were doing no more in offering the papers in question to their Lordships, than Mr. Hastings had desired; nay, he had claimed it as a *right*, as a debt due to a man under accusation, that what he conceived to be necessary to his defence should be laid before those in whom he acknowledged the power of condemning or acquitting him was lodged.

Mr. Law said, that Mr. Hastings did not appear to have been any other way connected with the papers in question, than that he had transmitted them to Europe; and their Lordships had already determined that the bare act of *transmission* was not sufficient to make the paper transmitted competent evidence against the person transmitting.

To weigh this objection, the Lords adjourned to the Chamber of Parliament.

FIFTY-FIRST DAY.

THURSDAY, July 2.

As soon as the Peers were seated, and the Prisoner appeared at the bar, the Lord Chancellor informed the Managers, that the resolution of their Lordships was, that the Minutes of Council offered in evidence on Tuesday last, ought not to be read.

Mr. Burke no longer insisting on this point, informed their Lordships, that he was going to give in evidence the minutes of a consultation of the Governor-General and Council of Bengal, held the 31st of July, 1775. The use he intended to make of this evidence, was to overturn a defence set up by Mr. Hastings, when he was charged with having appointed Munny Begum, Rajah Gourdass, and others, to succeed to the different offices from which he had improperly and unjustly removed Mohammed Reza Khan. Mr. Hastings had said, in his defence, that these appointments had been made by the Nabob himself, who had by letter to the Governor-General urged his right to the management of his own affairs, and the appointment of his own officers;—a right which, the Prisoner said, naturally belonged to a SOVEREIGN PRINCE, and which he could not, without injustice, dispute or deny.

—Mr. Burke said, that all this would appear from the minutes which he was going to give in evidence, to be a mere pretence, to clothe a corrupt act of his own with the name and authority of the Nabob; for their Lordships would find that the Nabob was a mere cypher; that he had no authority in Bengal; that he was a mere creature of the Company, depending upon them for his daily subsistence, and incapable of doing any act of power whatever without the consent of the Company.

Their Lordships, he said, would find this a description of the Nabob's situation, drawn by the very man who had since presumed to describe him as a SOVEREIGN PRINCE—by Mr. Hastings, who had given this description upon OATH in an AFFIDAVIT sworn in Bengal.

The history of the transaction which produced the affidavit was this—Nundocomar having charged the Governor-General with the receipt of bribes, the latter caused Nundocomar and Roy Radachurn to be indicted for a conspiracy. Roy Radachurn was at that time Vakeel, or Ambassador from the

Nabob of Bengal, to the Governor-General and Council at Calcutta; and in that character he claimed the PRIVILEGES which the law of nations gives to Ministers from SOVEREIGN PRINCES resident at foreign Courts, and which screen their persons from arrests and trials for misdemeanors.—This claim brought into discussion the actual situation of the Vakeel's PRINCIPAL, the Nabob of Bengal.

Mr. Burke having premised this, desired that the minutes of the consultation of the 31st of July, 1775, might be read. They were read accordingly. When the reading clerk had got as far as the place where the affidavit of Mr. Hastings was entered, Mr. Law asked, If what they were going to produce was the original affidavit?—The answer was in the negative. He then said, that the Managers must show some grounds to entitle them to read it.—Mr. Burke said, that it appeared in the minutes of consultation signed by the Prisoner, and transmitted to him by the Court of Directors.—Mr. Law remarked, that he might be warranted in contending that this copy of an affidavit ought not to be received in evidence; however, it was not his intention to make any further opposition.

The affidavit was then read, and it appeared very clearly from it that the Nabob of Bengal was, in the opinion of Mr. Hastings, nothing LESS than a SOVEREIGN PRINCE, and that the whole of the government of his country was in the hands of the East-India Company, upon whom the Nabob himself was in a state of absolute dependance.

It appeared also from the minutes of the 31st of July, 1775, that the Supreme Court of Judicature in Bengal, having over-ruled the plea put in by Roy Radachurn, that as a Minister of the Nabob he was not amenable to the English laws, and having declared the Nabob not to be a SOVEREIGN PRINCE, and not to be capable of investing any one with the character of AMBASSADOR, Mr. Francis, then a Member of the Council, stated many inconveniences that might arise from this decision of the Judges, and observed that it might expose the Company to the danger of wars with foreign powers, who might recognize the Nabob for Sovereign of Bengal, and make treaties with him.

Mr.

Mr. Hastings on this occasion entered a minute, in which he endeavoured to shew that there was no ground for the dangers apprehended by Mr. Francis; and the ground he took was to shew, that when Mr. Hastings called the Nabob a Sovereign, he gave him an appellation which he knew did not belong to him. For in that minute he stated that the French, and all other European nations connected with India, knew very well that the government of Bengal was substantially and really in the Company, and by no means in the Nabob; and that Mons. Chevalier, the French Governor, had always said, that if any thing was done contrary to subsisting treaties, by the Nabob or any of his people, it was to the Company, and not to the Nabob, that he would apply for redress, and that it was from the *former*, and not from the *latter*, that he would expect it.

Mr. Burke desired next that an affidavit made by Mr. George Vansittart, to the same effect with that made by Mr. Hastings, might be read.

Mr. Law said, he could not see how an affidavit, with which Mr. Hastings was in no degree connected, could be evidence against him. And even if it could be so in its nature, where was the proof that this affidavit had been made by Mr. Vansittart?

Mr. Burke replied, that the proof of the affidavit would be very easily supplied by the gentleman who made it. But as this objection had not been foreseen, no notice had been given to Mr. Vansittart to attend.—(This gentleman is a Member of Parliament, but was not present when this circumstance was mentioned.) Mr. Burke said, that the object of the Managers in wishing to read Mr. Vansittart's affidavit was to shew, that in the opinion of persons thoroughly acquainted with the government of Bengal, and the situation of the Nabob, the power and authority of the country resided not in the latter, but in the Company. However, as Mr. Vansittart was not in court, the Managers would postpone for the present the reading of his affidavit; and desired that certain resolutions of the Supreme Court of Judicature in Bengal, in the cause of Roy Radachurn, might be read.

But Mr. Law interposed an objection. He said, that in the first place, if the paper called for was a *judgment of a Court of Law*, the RECORD of that judgment ought to be produced. In

the next place, the Hon. Managers ought to shew that the *parties to that judgment* were *parties* in the *present cause*; for it was a rule of law, that a judgment in a cause *inter alios acta*, could be given in evidence on an issue between parties that were strangers to that judgment; and unless the judgment could be *reciprocally* used by both parties, it could not be received as evidence. Their Lordships, he hoped, therefore, would not suffer this judgment to be given in evidence in this trial.—The parties to the judgment were the King and the Roy Radachurn; the parties to the present trial were the Commons of Great Britain and Mr. Hastings; consequently the parties in the causes were not the same, and therefore neither of them ought to be suffered to give this judgment in evidence.

Mr. Burke said, he was surprised to hear a learned Gentleman lay down, in the hearing of so many of his own profession, and of the Judges of England, so untenable and indefensible a proposition as this—That no judgment of a court of law could be given in any case, or to prove any particular or collateral matter, unless the parties interested in that collateral matter were parties to the judgment offered in evidence. This doctrine, he contended, could not be sustained for a moment, because it went to establish a principle that would overturn all law. The use which he intended to make of the judgment of the Supreme Court of Judicature in Bengal was this, and it was an use which he was sure their Lordships would admit to be legal: To shew that the English Judges at Calcutta, who had taken pains to make themselves acquainted with the nature of the Nabob's real situation, had, after a solemn argument, determined that he was NOT a SOVEREIGN Prince, and was, in fact, NOTHING in the STATE. The application which he intended to make of this decision, was to destroy the *pretence* set up by Mr. Hastings, who, when (contrary to his duty and his orders from home) here moved Mohammed Reza Khan, and parcelled out his places among Munny Begum, Rajah Gourdas, and others, falsely alledged, that the appointment of these persons was not *his act*, but the act of the Nabob of Bengal, who as the Sovereign of the country had a RIGHT, and had *claimed* and exercised it, to manage his own affairs, and appoint Ministers of State.

State, and Ministers of Justice, in his own dominions.

Their Lordships would see by the decision of the Judges, that this RIGHT OF SOVEREIGNTY was not to be found in the Nabob; and that his right to appoint Ministers of State, and of Justice, was no where to be found but in the wretched defence set up by Mr. Hastings, to cover the *corruption* from which this appointment had flowed, and who had violated his duty to the Company, and the positive orders of the Company.

For this purpose, the judgment of the Supreme Court might be adduced in evidence, though it might have been given in a cause *inter alios acta*. But the learned Gentleman knew very well that this cause was not of that description; for Mr. Hastings was not in the *legit* sense of the word a STRANGER to that judgment, but a *party* to it.—The learned Gentleman had indeed endeavoured to prove that he was not a party to it, by calling the cause in the name of the King against Roy Radachurn.—But this was a shift to which nothing but the poverty of his cause could have driven the learned Gentleman. It was true that the prosecution ran in the name of the King; but it was well known that Mr. Hastings was the *real* prosecutor; that it was Mr. Hastings who had preferred the indictment; and that it was for the very purpose of getting rid of the specific charges of bribery and corruption, which the Managers were now endeavouring to bring home to him, that Mr. Hastings had brought the prosecution; and therefore he must in reason, in sense, and in justice, be considered as a *party*, and not a *stranger* to the judgment which the Managers wanted now to give in evidence.

Mr. Law observed, that if the judgment given by the Supreme Court was to be considered in the light only of an opinion of persons intimately acquainted with the nature of the Nabob's situation, he did not see how Mr. Hastings could be affected by it.

The Lord Chancellor asked whether Mr. Hastings had acted upon that opinion?

Mr. Burke replied, that he had, as appeared from his minute in answer to that of Mr. Francis.

Mr. Burke having read, as part of his speech, the title of what had hitherto been called the judgment of the Court, it appeared that in the Company's

books it was called *Resolutions* of the Judges in the case of Roy Radachurn.

Mr. Law observed, that this did not appear now to be a judgment of the Court, but merely a declaration of an opinion on a collateral point.

Mr. Burke said, that it was substantially a judgment upon the plea put in by Roy Radachurn, to the JURISDICTION of the Court, from which he maintained that he was exempted by his *public* character of Ambassador from the Nabob of Bengal.

The Lord Chancellor finding Mr. Law persist in his objection, took down as nearly as he could, the question on which Mr. Burke and the Counsel were at issue—which was, Whether a kind of interlocutory judgment given in an English Court at Calcutta, in the cause as already described, could be given in evidence in the present issue between the Commons and Mr. Hastings?

Mr. Burke informed the Lord Chancellor, that it was not only the judgment that he wanted to give in evidence, but also the speeches delivered by two of the Judges, containing the reasons that had determined them to concur in the judgment.

The Lord Chancellor having taken down the substance of the arguments on both sides, the House adjourned at three o'clock to the Chamber of Parliament, where their Lordships debated till near five o'clock, when the following question was put to the Judges:

“Whether the paper delivered to Sir Elijah Impey on the 7th of July 1775, in the Supreme Court, to the Secretary of the Supreme Council, in order to be transmitted to the Council as the Resolution of the Court, in respect to the claims made for Roy Radachurn, on account of his being Vackeel of the Nabob Mobarek al Dowlah, and which paper was the subject of the deliberation of the Council on the 31st of July 1775, Mr. Hastings being there present, and was by them transmitted to the Court of Directors as a ground for such instructions from the Court of Directors as the occasion might seem to require, may be admitted as evidence of the actual state and situation of the Nabob with reference to the English Government?”

The Judges having demanded time to consider the question, the Lords sent a Message to the Commons to acquaint them that they had adjourned the further proceedings in the trial of Mr. Hastings to Tuesday.

FIFTY-THIRD DAY.

TUESDAY, JULY 7.

The Lord Chancellor informed the Managers and Council, that the above paper, which had been offered in evidence on Thursday last, ought to be read.

The paper was accordingly read, and it appeared that in the opinion of the THREE Judges (and there were no more present at the time in the Supreme Court) the Nabob was not in a situation which could entitle him to appoint such Ministers as could be considered in the light of Ambassadors, or entitled to those privileges which, by the law of nations, as well as of particular states, were allowed to the Representatives of Sovereign Princes.

Sir Elijah Impey, one of the three Judges who decided upon the claim of Roy Radachurn, said, that the Treaty between the Company and the Nabob of Bengal, which Roy Radachurn had produced for the purpose of proving that the Nabob was a Sovereign Prince, and recognized as such by the Company, so far from proving any such thing, amounted to a complete surrender of the Sovereignty of Bengal to the Company by that Prince.

Sir Elijah Impey further observed, in giving his opinion, that from the evidence laid before the Court on this occasion, it was manifest that the revenue of Bengal was collected by the Company, and not by the Nabob. That all the establishments in the household of that Prince were under the controul of the Company, by whom the persons who filled all those offices were nominated and appointed. That the Nabob had no other revenue for his support, than that which was allowed and paid to him by the Company. In a word, that though the pomp and pageantry of a court were not taken from him, he had nothing left of the *reality* or *substance* of ROYALTY or SOVEREIGNTY; and therefore the Court could not endure that the *empty* name of Nabob should be thrust in between a *delinquent* and the *law*.

Mr. Justice Le Maitre, another of the Judges, said shortly, that he would not treat *ludicrously* a subject that the Supreme Council of Bengal had thought proper to refer to the Judges for their opinion; at the same time he declared he did not know how to treat it *seriously*.

The Supreme Council had sent to

the Supreme Court of Judicature the Memorial delivered to the Board in the name of Roy Radachurn, in which the claim to the privileges of an Ambassador was asserted by the memorialist.—On that claim the Supreme Council desired the opinion of the Judges.

Mr. Justice Hyde, the third Judge, said, that as it was clear from evidence that every man in the provinces of the Nabob who was concerned in the collection of the revenues, and every man who made a contract with any European to the amount of more than 500 rupees, was subject and amenable to the English Court of Judicature, it must be admitted that the Nabob did not possess the one great mark of SOVEREIGNTY, —the power of protecting his subjects: and it followed that he who could not protect his subjects from a foreign judicature, even when they were within the limits of his capital or residence, could not bestow upon any one of them a character which could protect them against the laws of England, when violated in a place far removed from the Nabob's residence, and where the English laws alone were known to prevail. The inference was plain and obvious, that such a prince was in reality no more than a *cypher* in the state, and incapable of imparting to any of his servants that character which none but sovereigns can bestow on the character of Ambassador.

Such appeared to be the Prince whom Mr. Hastings and his Council had represented as a SOVEREIGN Prince, who had claimed as belonging to him the right of appointing his own ministers and officers of justice, and whose claim could not be justly resisted.

Mr. Burke cauled various minutes of consultations in the Supreme Council to be read, from which it appeared that the Nabob having signified by letter, that being then of sufficient age to manage his own affairs, he desired they might be left to his management, and that the Company would leave to him the appointment of his own officers: Mr. Hastings moved in Council, that the Board should comply with the desire of the Nabob.

Mr. Francis resisted the motion, and said, that since the decision of the Supreme Court of Judicature, in the case of Roy Radachurn, in which the situation of the Nabob was so much concerned, it was a matter of very great delicacy to determine upon the request

of that Prince. He moved, therefore, that a copy of the Nabob's letter should be sent to the Court of Directors; and that the Board should wait the pleasure of the Directors, before any answer was returned to the letter.

Mr. Wheeler, another Member of the Council, concurred in opinion with Mr. Francis; and it was finally resolved that no further step should be taken by the Council, until the Court of Directors should have sent them over instructions how to act.

However, in some short time after, Mr. Hastings, who wanted to comply with the requisition of the Nabob, only that *he himself* might have *really* the appointment of all that Prince's ministers and officers, whilst the *nominal* appointment should appear to be in the Nabob, acquiring a majority in the Council by the recovery of Mr. Brwell, who had been indisposed, caused the above resolution to be rescinded, and then got the Council to comply with the Nabob's requisition.

In consequence of this Mohammed Rezi Khan was removed, and Munny Begum placed one more at the head of the Nabob's affairs.

The allowance given her by Mr. Hastings was 12,000 rupees a-month, or 14,000l. a year, whilst that of the Nabob's *own mother* amounted to only two-thirds of that sum; and to R-jah Gourdas and another person a salary was given, which, together with that of Munny Begum, made the whole 30,000l. a-year. This sum was not paid out of the Nabob's allowance, but out of the funds of the Company.

All this appeared to be contrary to the general tenor of the orders sent out by the Court of Directors.

Mr. Burke informed the Lords, that he was going to produce evidence to prove that the appointment of Munny Begum to the management of the Nabob's affairs was followed by the most fatal consequences. The administration of justice was neglected, the police of the country was totally disregarded, and murders and robberies were daily committed, because there was no police to prevent them, and the laws being *inactive*, impunity followed of course the commission of crimes.

Mr. Law said, he could see no ground on which the evidence offered by the Hon. Member could be made applicable to the charge then under the consideration of their Lordships. The appoint-

ment of Munny Begum, in 1774, was made a charge against Mr. Hastings: facts which were many years subsequent to that appointment, could not be adduced to prove that the placing of Munny Begum many years before at the head of the Nizamut, was the effect of a corrupt intent in Mr. Hastings.

Mr. Burke insisted, that the facts which he was going to give in evidence were strictly in point, to prove the intent of the prisoner in raising the Begum to this office, to have been corrupt. These facts had come to the knowledge of Mr. Hastings; and yet, so far from having taken any steps to remove the Begum, or to check her for having suffered justice to sleep, that he took every opportunity to shew her that his friendship for her was not to be shaken by her mal-administration.

Mr. Law withdrew his opposition to the evidence.

And then the papers called for by Mr. Burke were read.

Mr. Burke next proved, that Mr. Hastings, not thinking this woman, whom he had so often appointed to various stations, in opposition to the Court of Directors, and to whom he had made such a liberal allowance out of the Company's money, sufficiently rewarded, wrote to the Court of Directors, and recommended her to their liberality. In that letter, which was read, he took the liberty of advising the Company to settle upon her a pension of *one lakh* and 10,000 rupees a year. All this he did *after* he knew she had declared that she had given him large bribes.

Mr. Law desired that a letter might be read, from which it would appear that the Court of Directors had since wrote to Lord Cornwallis, ordering his Lordship to enquire into the situation of the Begum, and report whether it appeared to him that she stood in need of a pension.

Mr. Burke said that there was no necessity for the reading of the letter mentioned by the learned Gentleman, as he was ready to acknowledge it had been sent to Lord Cornwallis.

However, in order to obviate the inference that might be drawn from that letter, he said he would prove that Munny Begum stood in no need of a pension, for that she had many very great resources, from which she derived considerable wealth. Those resources, he said, were such as would surprize their Lordships, particularly

after

after they had heard the high character which Mr. Hastings had given of her in his commendatory letter to the Court of Directors, in which he had described her as a woman whose purity the breath of calumny had never dared to sully. This woman of unsullied purity, their Lordships would remember, had been proved by evidence at their bar to have been a *dancing girl* and a *prostitute*: and when he should mention to them one of her extraordinary sources of wealth, they would think she was busied in those employments only which became a *femle*, and the *widow* of a *great Prince*. But not to detain their Lordships any longer, he would inform them that this *paragon of purity*, this Munny Begum, kept the greatest gin-shop in all Asia, from the tomb of Mahomet at Mecca to the furthest extremity of country in which the Mahometan religion prevailed.

She carried on a most extensive trade in *spirituous liquors*, and had got into her own hands the monopoly of them in the city of Moorshedabad, the reliance of the Nabob and of herself.

In carrying on this trade, *so fit* for a *woman*, and a person in her situation, she had thrown the revenue of that department of that city into great confusion, for she refused to pay any duty for spirits imported in her name, or, in other words, for almost all the spirits consumed in Moorshedabad. The profit she made by this trade might in some measure be calculated from the decrease in the customs on spirits in that city, which was alarmingly great.

A gentleman, speaking upon this trade carried on by a *femle*, had wittily observed, that as it was an opinion among the Mahometans, that *women* have no *souls*, this Lady might have thought proper to take up this trade to shew they were not deficient in *spirit*.

Mr. Law for a while resisted the production of the paper, by which it was to be proved that the Begum carried on this trade in spirits; alledging that as the paper was dated in 1781, it ought not to be admitted in support of a charge founded on an act done in 1774. However, he at last withdrew his opposition; and that the remark which he had just made being taken down as part of the trial, he would no longer oppose the reading of the paper.—It was accordingly read, and proved what Mr. Burke had alledged.

Mr. Burke said he did not intend to

offer any more *written evidence* in support of that part of the charge which he had opened. But as Mr. Hastings had said in some minutes which were before their Lordships, that the letters under the hand and seal of the Begum, and the answers which she had sent to queries transmitted to her by Mr. Hastings, had been obtained by Mr. Goring in an unjustifiable manner; as he had asserted that Mr. Goring had *awed* the Begum, and made her say whatever a dread of him inspired, the Managers thought it proper to call Mr. Goring, for the purpose of proving that he had used no threat or unbecoming influence whatever to procure the letters and answers in question.

Mr. Law said, that if the Managers first produced the minutes entered by Mr. Hastings as evidence against himself, these minutes ought to be considered as the *witnesses* for the prosecution; and therefore the Managers should not be permitted to *disparage* them, by afterwards endeavouring to prove that they were *false*.

Mr. Burke observed, that this was a paltry argument, far below the dignity of the learned Gentleman who had used it. Their Lordship, he said, would recollect *whence* the Commons derived their evidence—from the records of the East India Company, made up by the culprit himself;—and therefore, as those records were produced by the Managers as *witnesses* for the *prosecution*, they were in fact the *witnesses* of the *prisoner*. The same might be said of the *living witnesses* who had been examined at the bar. There was not one of them, except Mr. Goring, who was not a creature of the prisoner, to whom, with the single exception he had already made, they all owed their fortunes.

Mr. Goring indeed was a witness of a different description; he owed nothing to Mr. Hastings; he was not his creature or dependant; nor did he owe to him a shilling of the fortune he possessed. Mr. Goring, then, was the only person who had yet been examined, who might truly be called the witness of the prosecutors. Between them and this Gentleman there was no other communication or connexion than that which ought to subsist between an *honest witness* and an *honest prosecutor*.

The minutes recorded by Mr. Hastings had been given in evidence by the Managers, that their Lordships might see

for what were the *pretences* under which he defended his conduct. But surely it would not be advanced by any man, except the learned Counsel, that because the Managers had given those pretences in evidence, they were not to be afterwards at liberty to shew that these pretences were *false*.

It was at this time five o'clock, and the Lords were going to rise, when Mr. Burke begged leave to inform them, that whenever they should determine that Mr. Goring might be examined, his examination would take up a very short time; and with that examination the Managers intended to close the evidence in support of the charge relative to bribes, which *he* (Mr. Burke) had opened;—and that immediately after Mr. Goring should have been examined, Mr. Anstouther, one of the Managers, would open the remainder of the charge.

Mr. Burke having given this information, their Lordships immediately adjourned.

FIFTY-FOURTH DAY.

WEDNESDAY, July 8.

The Lord Chancellor informed the Managers and the Counsel for the Defendant, that their Lordships having taken into consideration the objections made by the Counsel to the requisition made by the Managers, "that Mr. Goring might be examined," together with the arguments used by the Managers to shew that they were entitled to produce evidence to refute some points contained in minutes of Mr. Hastings already given in evidence, had resolved, "that the questions to which the said Managers wished to obtain answers from Mr. Goring, *ought not to be put*."

Mr. Burke hearing this, said that the Managers submitted to this decision of the House, but could by no means acquiesce with satisfaction in the propriety of it.

The Lord Chancellor interrupting him, said, it was the duty of the House to lay down the *rule* of proceeding.

"I know it, my Lord," replied Mr. Burke; "and it is not less my duty than it is my inclination, to respect any rule which the House may think proper to lay down. I am sure they are anxious to ground their rules upon the soundest principles; and I am convinced they determine from the purest motives. But when the

"precise principles which govern their determinations are not known to me, it is impossible that I should approve what I have no opportunity of knowing. Every act of this House claims my respect; but approbation must be the effect of a thorough knowledge of all the grounds on which an act is established.

"By this determination of your Lordships, the Managers are put in a situation singularly awkward. They have given in evidence certain documents signed and recorded by the prisoner. These documents contain his statements of facts, and assign the motives for his conduct. In laying these documents before your Lordships, the Managers meant only to shew that the prisoner had falsified the transactions to which they related: the Managers intended afterwards to prove that the colourings given by the prisoner to these facts were *false*, and nothing better than *pretences*, to which he had been obliged to resort to conceal his *guilt*, in the transactions to which the Managers alluded, and which, if stated *truly and fairly*, would prove the charges that had been brought against him.

"But now, the Managers find themselves stopped by your Lordships' resolution, which places them exactly in this situation—That they originally gave in evidence certain documents proceeding from the prisoner, with a view afterwards to prove that they contained a false statement of facts, made by the prisoner himself for the purpose of concealing his guilt: but now those documents are to remain uncontradicted; and those very instruments, which were intended as proofs of his crimes, are now to be left as evidence of his innocence.

"Your Lordships' resolution appearing in this point, it is not surprising that it does not give *satisfaction* to the Managers, who nevertheless submit to it with that respect which is due to an act of this House."

Mr. Burke having made this short speech informed their Lordships, that until some *new* ground should occur, on which he might again call upon the House to receive that evidence which from their resolution this day he learnt they were not disposed to admit *now*, he did not intend to offer any more evidence

dence for the present, in support of that part of the charge which he had had the honour of opening to their Lordships.

Mr. Law was proceeding to enter a counter-*protest* against the *protest* which Mr. Burke had entered against the decision of their Lordships, but he was interrupted by

The Lord Chancellor, who observed, "that what had been said by the Hon. Manager concerned the *House* only, and not the cause in which the learned Counsel was concerned, which was solely the defence of his client.—Whatever might be the opinion of the Public respecting the decisions of that House, it was the duty of their Lordships to determine according to the dictates of their judgment and their conscience, and to do justice between the accusers and the accused.

Mr. Anstruther informed the House, that his Hon. Colleague having concluded the first part of the charge, it had fallen to ~~his~~ lot to open the second. The case which he was now going to make out embraced a variety of objects, and would necessarily lead him into minute details, and discussions of considerable length.

The Lord Chancellor said, he wished to ask the Hon. Manager, whether it was in his power to state to the House, within what time he thought he should be able to conclude both his opening, and the evidence which he meant to adduce in support of it. If he understood right, the part of the charge which he was going to open, was distinct from that which for some time past had occupied the House.

His object in asking the Hon. Manager within what space of time he thought he could bring these points to a conclusion, was to consult the convenience of the Court and of the parties concerned, as far as it could be consulted consistently with public justice. On the one hand, he did not wish to delay the proceedings; and on the other, he would not wish to break them off in the middle of an opening speech. He would be glad, therefore, if the Hon. Manager would inform the House whether he thought that within the space of two or three days he could conclude the evidence which was to follow his speech.

Mr. Anstruther said, that undoubtedly the case which he was about to open, was very distinct from that which had been closed by the Hon. Manager.

It referred to bribes taken by Mr. Hastings in four or five different provinces of Bengal, exclusive of the large sum which he received at Calcutta from Rajah Nobkissen.

These different bribes were so far from being connected with those opened by the other Hon. Manager, that they were not connected with one another; but each of them might form a separate and distinct charge.

In opening the case of these bribes, it would be his duty, he said, to go very much at length into the history of the prisoner's Administration, and to detect the numberless falsehoods in which he had enveloped those acts which were now charged upon him as crimes.

He should have occasion also to show the many dreadful consequences that had attended, on many occasions, the receipt of several of those bribes; and particularly he should be obliged to go into a minute investigation of a subject which had lately been treated with very indecent levity; he meant the subject of the cruelties exercised by Deby Sing, in which he would prove such a participation on the part of the prisoner, as would bring home to him the responsibility with which the Commons had charged him on that head.

In what length of time he should be able to accomplish this, he could not take upon himself to determine. That would depend much upon the objections which the Counsel for the prisoner might think proper to make to the different articles of evidence which the Managers might find it necessary to offer.

He feared then, that however concise he might wish to be, it would be impossible for him to bring a work of such extent to a conclusion in the short space of time mentioned by his Lordship.

To whatever the House should determine on the subject he was ready to submit. If they wished him to proceed, he would enter upon his task immediately. If they could not spare so much time at the present period of the session as he thought he should have occasion to consume, he did not wish to put their Lordships to any inconvenience.

The Lord Chancellor, on hearing this, shut up his note-book, and was going to leave the woodcock, when

Mr. Hastings immediately addressed the Court in the following words:

" My Lords,

" May I be permitted to offer a few words to your Lordships?—

" I feel myself unequal to the occasion which so suddenly calls upon me to state to your Lordships what I feel of the unexampled hardships of this Trial.—I came here to-day utterly unprepared for such an event as that which I perceive now impending; I therefore entreat your Lordships indulgence for a few moments, while I recollect myself.—

" I must beg you will be pleased to consider the situation in which I stand, and the awe which I must unavoidably feel, in addressing this august assembly. I have already, in a Petition presented to your Lordships in the beginning of this year, represented the hardships and grievances, and but a part of the hardships and grievances, which I thought I had sustained when only one year of this Impeachment had passed. These have accumulated,—many of " them have proportionably accumulated, with the time that has since elapsed: but in my sense of them," they have been infinitely aggravated, when I have seen so little done, and so much time expended; such a long period consumed, and yet not one-tenth part of one single Article of the Twenty which compose the Charge, brought to a conclusion on the part of the prosecution only. If five months have been thus consumed, what period, my Lords, shall I estimate as necessary for the remainder of the Impeachment? My life, in any estimation of it, will not be sufficient. It is impossible that I should survive to its close, if continued as it has hitherto proceeded; and although I know not what to make the specifick prayer of my petition, I do beseech your Lordships to consider what injury my health and my fortune must sustain, if it be your determination that I must wait till it shall please the justice, the candour of the Hon. House of Commons, which has impeached me before your Lordships, to close this prosecution.

" My Lords, I hope I shall not be thought to deviate from the respect which I feel, equally, & am sure, with any man living, for this high Court, if I say, that had a precedent existed in England, of a man accused and impeached as I have been, whose Trial had actually been protracted to such a length, or if I had conceived it possible that mine could have been so protract-

ed, I hope your Lordships will pardon me if I say—I would at once have pleaded GUILTY; I would not have sustained this Trial; I would have rested my cause and my character, which is much dearer to me than life, upon that truth, which sooner or later will shew itself. This, my Lords, I would have done, rather than have submitted to a trial, which of itself has been a punishment a hundred times more severe than any punishment your Lordships could have inflicted upon me, had I pleaded GUILTY. What must I not continue to experience, by a life of impeachment?

" And now, my Lords, I beg leave to submit my case to your Lordships, well knowing that if it is in your power to apply a remedy to the hardships which I have sustained, and to those which I am yet likely to suffer, your Lordships will do it. I cannot be so unreasonable as to expect that your Lordships should waste more of your time in the continuation of this trial, when the year is so much advanced, and when, as I believe, by the custom of Parliament, it has been usual for your Lordships to retire from the business of the Session; I do therefore humbly submit myself to your Lordships justice and goodness. Yet if the Honourable Managers could propose a short time, such a period as your Lordships could afford, in order to close this Impeachment, which I have been told (perhaps falsely) was to end with the present article, I should be willing in that case even to waive any defence, rather than protract the decision to another year—it may be for many years; I would pray your Lordships to proceed to judgment on the evidence which my Prosecutors have adduced for my conviction.

" My Lords, I hope I have said nothing that is disrespectful to your Lordships; I am sure I have felt no other sentiments than those of deference and respect for this great Assembly."

The Lord Chancellor observed to Mr. Hastings, that the delay now proposed was *not* occasioned or desired by the *Managers*. He had himself suggested the idea of it, with a view to consult the convenience of the House, as far as was compatible with the ends of justice; and he assured Mr. Hastings, that in the resolution which the House should adopt with respect to the intended delay, every attention should be

be paid to the ideas that he had submitted to the House.

A motion was then made to adjourn to the Chamber of Parliament; and the House being resumed,

The Lord President* arose, and said, from what their Lordships had heard in the Court below, it was impossible to get through the tenth part of the next part of the Charge, before their Lordships would lose the assistance of the learned Judges. His Lordship then touched upon what had fallen from Mr. Hastings, and said he was convinced there was not a Noble Lord present who had heard what that miserable man had modestly submitted, but whose humanity went hand in hand with him, for giving every assistance to his supplication that lay in their power, consistent with the rules of justice; but his Lordship said,

it was not in the power of that House to assist him, let them be ever so desirous of doing so: they were bound to sit it out, be it ever so long. Many of their Lordships might not live to see the conclusion. It was a proceeding which in its nature this Country had never before experienced, and it was beyond the gift of foresight to tell when an end would be put to it: all that he should at present move was, "That the further consideration be put off to a future day."

It was then moved, "That this House proceed further on the Trial of Warren Hastings, Esq. on the *first* Tuesday in the next Session of Parliament; and that a message be sent to the Commons to acquaint them therewith."

Agreed to, *nem. contra. ligante.*

Earl of Camden.

END OF THE SECOND PART.

THE
T R I A L
OF
WARREN HASTINGS, Esq. &c.

P A R T III.

FIFTY-FIFTH DAY.

TUESDAY, Feb. 16.

BEING the day appointed for resuming the proceedings on the Charges exhibited by the Commons against Warren Hastings, Esq. about one o'clock Mr. Burke appeared, leading the procession of Managers.

The Lords having concluded their procession, and being arranged in due form, Mr. Hastings was brought to the bar on his knees. Having, as usual, obtained permission to rise, the proclamation of silence was made, and the Managers desired to proceed.

Mr. Anstruther then rose. In obedience, he said, to the commands of the Commons of Great Britain, he had now to submit to their Lordships the remaining part of the offences of Mr. Hastings on the score of *Presentis*; the outlines of which he had in some degree described to them at the close of the last Session. What they had hitherto heard in the former Charges, of atrocious offence in the expulsion of a Prince and the plunder of Provinces, related chiefly to the External Government of Mr. Hastings in India, in which he was shewn to be oppressive, cruel, and tyrannical.

They were now to be informed of his Internal Government, which would be found to be corrupt, as well as oppressive and tyrannical. He had to state to them, that in every instance he disobeyed the command and injunction of his masters. He had to state, that he had also acted contradictory to those very regulations he had himself recommended. He had also to state, that in every instance where he practised those unwarrantable innovations and acts of disobedience, it invariably happened that he always re-

ceived a sum of money. That these sums were either never accounted for, or applied to the service of the Company; or when they were, it was done on the approach of the moment of detection. That he had no right to have taken these Presents, though he should have applied them all to the use of the Company. That he had employed the worst of men for the worst of purposes, and that at the time he knew them to be so, by his raking into the jails of Patna, and selecting the convicted felons of Calcutta, to domineer over and plunder provinces, as the instruments of his rapacity.

The acts of disobedience which he should instance, he said, would be numerous; it would be for their Lordships to infer, from concomitant circumstances, the corrupt motives in which they had originated. To assist their Lordships in drawing this inference, he would contrast the opinions and actions of Mr. Hastings at different periods relating to the same object.

At one period, Mr. Hastings in his minutes in Council, and in his dispatches to the Court of Directors, contended, that the revenue was so intimately connected with the general government of the country, that the Supreme Council could not delegate its powers with safety, even for a moment, to any man or set of men whatever. But at another period he found it convenient to his corrupt purposes to abandon this opinion, and take up another, not only different from it, but diametrically opposite to it; for he established a Revenue Board, to which he delegated the whole power of the Supreme Council over the finances of Bengal.

That the object of this delegation was corrupt, would appear from a variety

riety of circumstances. Had the Supreme Council retained the controul over the revenue, the oppression of the Provinces, the bare-faced speculations must have been known to it, and consequently checked and suppressed, and the Governor-General could not carry on his system of corruption.

At this Board of Revenue he placed Mr. David Anderson, Mr. Shore, Mr. Croft, and Mr. Carter. The evidence of these gentlemen, however attached they might be to Mr. Hastings, would convince their Lordships, that he had no other object in view in forming this Board, than to carry on his corrupt designs without controul.

In his reasons for appointing Mr. D. Anderson head of that Board, Mr. Hastings had stated to the Court of Directors, that the abilities of this gentleman were so great, that they would be of infinite service to the Company in the collection and management of the revenue. And yet, though it was on account of those abilities that Mr. Hastings had appointed Mr. Anderson to a seat at that Board, it was very remarkable that he employed this gentleman's talents in quite another line; and for the space of FOUR YEARS he did not afford him an opportunity of attending the Board more than 44 days. If the formation of this Board was to be of great advantage to the Company, and if Mr. Anderson was the person best qualified by his talents to make it so, how came it to pass, that out of 1460 days that gentleman was not suffered to devote more than 44 to the business of the Board?—Whatever might be the abilities of Mr. Anderson in the management of the revenue, it was clear that Mr. Hastings did not want to employ them in that line of service. In truth, it was not his object that this Board should have it in its power to act according to the spirit of its pretended institution, which was to be a check and controul upon the different offices of revenue in the different Provinces.

That their Lordships might be convinced that he did not make such an assertion as this without authority, Mr. Anstruther said, he would quote the opinion of the Board itself, as delivered by Mr. Shore and Mr. Croft, two members of it.

Here he read the opinion from the Company's records. It was in substance, That the Members of the Board

felt that they were but cyphers, the mere *tools* of the Dewan; that let their abilities be ever so great, it would be *folly and falsehood* for them to say that they could execute the duties of their office with any advantage to the Company, as the Dewan had it in his power to oppress and ruin the Provinces, not only without any controul from the Board, but even without its knowledge.

This being the state of the case, Mr. Anstruther said, it would be necessary for him to state who was the Dewan whom Mr. Hastings had given as an assistant to the Board of Revenue, and who made the Members of it his *tools*, and instruments of his oppressions.

This Dewan was no other than the famous or rather infamous Gunga Govin Sing, who was considered as the most unprincipled and flagitious character in all Indostan.

It would be no excuse for Mr. Hastings to say, that when he appointed this person Dewan, he did not know that his character was bad; for it was the business of a Governor-General to make enquiries, and know that a man who was to be appointed to a most important trust had a *good* character.—The truth was, Mr. Hastings knew full well that Gunga Govin Sing was the very outcast of society; that he was despised by every man who had the least pretension to either honour or honesty.

When his appointment was agitated in Council, General Clavering and Col. Monson both declared that they heard every person, as well natives as Europeans, describe him as a most infamous character.

In the minute where this debate was recorded, it appeared that Mr. Hastings himself admitted that every one spoke ill of Gunga Govin Sing, and gave him a bad character; but he knew him to be a man of abilities, and he had not heard that any particular charge had been proved upon him. This, Mr. Anstruther said, was a most singular mode of reasoning. When *character* became a question, every one knew that it was for the *general* character a man was esteemed or despised; and as the *general* character of Gunga Govin Sing was execrably bad, Mr. Hastings should have judged him unfit for any situation of trust, although no one particular charge of guilt should have been proved against him.

Mr. Hastings, he said, was the first person who had placed a dishonest man in a situation of great pecuniary trust, and in which he was to be a check upon corrupt men, and assigned as a reason for such an appointment, that the man possessed great talents.

That Gunga Govin Sing possessed great talents no one could dispute; but they were the talents of corruption, and his *coup d'essai* of them was a bribe of 40,000l. sterling, given by him to Mr. Hastings. This bribe it was, and the prospect of getting many more, that made Mr. Hastings place at the head of the Company's revenue the most infamous man in all Indostan. And the conduct of this man, whilst he remained in office, justified the opinion that all Indostan entertained of him—he carried ruin and devastation into the Provinces, and reduced the inhabitants to the very lowest state of distress.

Mr. Anstruther adverted next to the appointment of Deby Sing to the collection of the revenue in Dinapore.

In the year 1774, Deby Sing, he said, had been tried and convicted on the charges of Mr. Hastings as a felon, of extortion and oppression, and had been proved to have conducted himself with a degree of cruelty equal to what the utmost wrath of God could inflict; yet this man was afterwards received as the bosom friend of the prisoner, and made collector of the revenues of Dinapore!

Though Mr. Hastings knew that this man was capable of being guilty of any enormity, and fit for any corrupt purpose, yet he turned a young Rajah out of his country to gratify this monster, under pretence that he was in arrears to the Company, at a deplorable period (1777), when famine had added to the pressure of extortion, and cruelty and oppression had pervaded every part of the country.

This infant Rajah had been exiled from his territories, because, as the prisoner had stated, he was indebted 15,000l. to the Company, at a time when Mr. Hastings had in his coffers 40,000l. of his money. The money received from Dinapore from Deby Sing, by Mr. Hastings, he insisted was a bribe for appointing a vagabond and a felon the successor of the infant Rajah!

The friends of Mr. Hastings, he said, had endeavoured to make out two grounds of defence against the Charges brought against him in consequence

of the shocking administration of Deby Sing.

One was, that the cruelties said to have been practised by this man, never had any existence but in fiction or imagination. The other was, that even if all those acts of cruelty ascribed to Deby Sing were founded in truth, they could not be charged upon Mr. Hastings, who could not, with any shadow of justice, be considered as responsible for them.

Mr. Anstruther, from various documents which he read, removed the first ground of defence, by shewing that the cruelties ascribed to Deby Sing were but too well founded in truth; that confining men in dungeons, loading them with irons, scourging them with rods, &c. &c. were the ordinary modes of collecting revenue; but that fixing sticks between the fingers, and drawing them together with cords, thrusting gun-locks and lashing powder in the muscular parts of the body, tying father to son and scourging both together, scourging children before the eyes of their parents, &c. &c. were methods practised only in 1781 and 1782, the precise period of Deby Sing's administration. By such severities under his administration, armed with the powers of Farmer, Controller, and Guardian to the young Rajah, were the villages depopulated, cultivation destroyed, and the whole face of the country reduced to one dreary waste, with here and there a few wretched inhabitants, whose scanty numbers, haggard looks, and emaciated bodies, presented only the painful idea, that what was now desolate had once been inhabited.

Mr. Anstruther next shewed how far Mr. Hastings was responsible for the acts of Deby Sing. He did not mean to say that he was answerable for all those acts in the same degree as if he had done them with his own hands; but he was answerable for the calamities which a whole Province had suffered in consequence of an appointment made by him from motives of corruption; an appointment which he had every reason before-hand to believe would occasion, as it certainly did afterwards occasion, the complete ruin and devastation of a populous and wealthy Province.

Having dwelt long upon this topic, Mr. Anstruther adverted to the wholesome regulations made by the Court of Directors, and communicated to Mr. Hastings, with orders to see them carried into effect.

Some of these regulations were, that in the letting of lands the hereditary Zemindars should be preferred to all others who should bid for them—that by whatever tenure land was held, the tenant should not be called upon to pay more than the sum mentioned in his lease or grant—that no person, except a hereditary Zemindar, should be permitted to hold more than one farm of the yearly value of one lack of rupees; and that it should not be lawful for the Governor-General to give any farm of any value to any native employed as a Banyan by an European.

From every one of these regulations had Mr. Hastings departed. The hereditary Zemindars had been turned off; farms to the yearly value of 30, sometimes 40 and 50 lacks of rupees were given to the same person; and those to whom the largest, best, and greatest number of farms had been given, were the *Banyans* of the *Company's servants*.

But what proved that the deviation from the Company's regulations was for corrupt purposes, was, that not one instance of such deviation occurred, which could not be proved to have been attended with a present, or bribe, to Mr. Hastings.

Mr. Anstruther stated a number of instances in support of this assertion. He shewed, that from one person Mr. Hastings had received 40,000*l.*—from another 15,000*l.*—from another 6000*l.*—from another 34,000*l.*

He alluded to Calcutta, another agent of Mr. Hastings, a fellow of infamous character. His notoriety, as an unprincipled knave, had been corroborated by Mr. Anderson. This man Mr. Hastings had vested with a most extensive authority; he was described as the refuse of mankind, who was dreaded by the natives more than a visitation from a Mahratta army; and yet this wretch had been placed in an ostensible situation for the benefit of the East India Company!

This notorious speculator, it had been said, was continued in office merely for the good of the Company; but he begged leave to remind their Lordships, that he had been turned out of office for a defalcation of at least 20,000*l.*—a fine, Mr. Hastings said, for the investiture of the *young Rajah* of Dinapore, and which in fact was the only story, Mr. Anstruther remarked, that could not be true!

He next called their Lordships attention

to a man of the name of *Nundolol*. This man was a character equally infamous as Deby Sing, who had been also patronized by the prisoner.—Mr. Anstruther, after reciting a number of frauds committed by this accomplished knave, admitted that he was called before the Committee to account for his flagitious conduct; and the only answer or defence he made was, "*That he saw Mr. Hastings and Mr. Anderson at Benares.*"—Nundolol was dismissed in consequence of this defence, and defied in future the Zemindars.

The next sum taken by Mr. Hastings was attended, he remarked, with the most extraordinary circumstances. He had sent to a native of Calcutta (*Rajah Nookissen*) to borrow three lacks of rupees, and desired him to bring a bond:—being intrusted with the collection of a great province, and supposing he owed a large sum to the Company, he requested Mr. Hastings to accept the money;—but the fact was, the Company owed this Collector 40,000*l.* and therefore, though he dispatched him without perfecting the bond, he could have been, he thought, convicted of refusing a bribe, or be charged with refusing one!

Mr. Anstruther adverted then to another Charge, which he pledged himself to support by the most satisfactory evidence:—This was a sum of ONE HUNDRED and FIFTY THOUSAND RUPEES received, given him by the Rajah of Nadesa, who sent for the prisoner to witness his will. This man afterwards fell into arrears with the Company, and was confined in irons, though Mr. Hastings had enough of the unfortunate Rajah's property in his coffers to pay the balance!

All the appointments made in consequence of bribes, proved fatal to the Provinces, and ruinous to the Company's interest. Everywhere the people were required, contrary to the Company's orders, to pay greater rents for their lands than were specified in their leases; and in the end were ruined.

And so completely had these Collectors of the Revenue fleeced the country, that the Supreme Council found it necessary to lower the rents in many districts, and let the lands for less money than had ever been paid, either by the present possessors, or their immediate predecessors.

Mr. Anstruther touched afterwards upon the Present of 100,000*l.* from the Nabob of Oude to Mr. Hastings, and upon

upon the defence set up by the latter respecting all the different Presents that he had received, and which he said he afterwards paid to the Company, as having taken them originally for the Company's use.

He shewed that *concealment* was the original intention of Mr. Hastings; for when he paid the money received by him in Presents into the Company's treasury, he took bonds for it made payable to himself. Why did he do this?—Because it was not his intention that the Company should ever know he was lending it its own money. And why did he afterwards indorse or assign those bonds to the Company? Because he feared he could no longer conceal the means by which he had acquired the money for which he had taken the bonds.—Mr. Anstruther shewed afterwards, that though these bonds had been assigned to the Company, Mr. Hastings had obtained payment for some of them; and this he said he would prove when he should produce his evidence.

Mr. Anstruther afterwards took notice of the letter written by Mr. Hastings from India, in which he made a discovery of the means by which he obtained the money for which he had taken the bonds; and also of his letter from Cheltenham on the same subject. These letters, which Mr. Hastings calls letters of *discovery*, Mr. Anstruther called letters of *concealment*; and he assured the Lords, that he would prove there was not one word of truth in the accounts given by Mr. Hastings in those letters; and that though he wished to be thought entitled to merit for making a discovery in them of the Presents he received, his real object in writing these letters was to *conceal*, not *discover* the bribes he had received.

He then proceeded to a dissertation on the strength of circumstantial evidence, with which it was his intention to substantiate this Charge. From human conduct could be drawn the best clue to human motives, and when he described the conduct of Mr. Hastings at the time, about the time, before the time, and after the time of his receiving those Presents, their Lordships would be enabled to draw irresistible conclusions in *favour of his guilt*.

In the praise of circumstantial evidence, he recurred to an illustration which some may think rather an inglorious one, the case of Captain Don-

nellan who was *hanged*. Circumstantial evidence alone convicted him of Murder, and of his guilt he might safely assert that no man ever doubted. Positive evidence may easily be invented, but a train of circumstances in a man's conduct always spoke for itself.

Expatiating next on the nature of those offences, he said the attendant circumstances were not merely aggravations, each was in itself strong enough for a substantive charge. Corruption was a crime which always hid its head in the dark, while other vices often appeared in open day. The projects of ambition were criminal and vicious; but as they required qualities and talents that *approached* less *distantly* to virtues, and partook more of their appearance, they were frequently avowed, whilst the meanness of corruption induced the guilty to conceal it.

Mr. Anstruther lastly took notice of a new defence that had been set up *somewhere* (alluding to the news-papers) for the conduct of Mr. Hastings. It had been urged, that though his actions might not be strictly conformable to principles of virtue and morality, yet if the country was made to flourish under his administration, Parliament ought not to look at the *means* he had employed, but at the *end* which they had produced. This was a doctrine which he held to be execrable, and on which he was ready to join issue with those who were so lost to virtue as to maintain it.—If India could not be governed but by a violation of every principle of morality and virtue, if oppression and peculation were the only means of raising a revenue in it, “in the name of God, said he, in the name of virtue, justice, humanity, and integrity, let us abdicate the government of India; for on such terms no nation that holds its own character dear, and respects the principles which in all ages and in all quarters have guided the councils of every honourable and wise people, would wish to hold it.”

He then shewed that those who would defend the most abominable measures, provided they made the country flourish, could not on that ground defend Mr. Hastings. For he proved by a letter from Lord Cornwallis, that India was not left in a flourishing state by Mr. Hastings.

His Lordship said in his letter, that it was a most desirable object to secure to every man in India his property, and

and shield him from oppression. That in their wish to accomplish so just and honourable an end, the Company should have his most cordial co-operation : but he thought that in the *reduced and deplorable* state of the country, he should find it an *arduous task* indeed to carry the intentions of the Company into effect. That he was of opinion that the Government should begin by restoring to the ancient noble and hereditary Zemindars, and principal land-owners in Bengal, the means of rising above poverty, and living with some degree of *decency*.

"What, then," said Mr. Anstruther, "are persons of this description unable at this moment to live with *decency*, while those are revelling in the enjoyment of every luxury, who had so impoverished and degraded them? Mr. Hastings—Mr. Hastings, said he, is the man who by letting loose upon them a swarm of locusts that devoured up their property, has reduced them from affluence and splendour to a state of indigence and poverty. If such then is the state of the great body of Zemindars, Nobles, and Gentry of Bengal, what must be the condition of the lower orders of the people?—And who can say that Mr. Hastings has left the country in a flourishing situation, or that he is not accountable to your Lordships and to the laws, for the calamities he has brought upon those whom he was sent to govern not destroy; and whose happiness and prosperity it was his bounden duty to promote by every means in his power?"

After a short recapitulation, Mr. Anstruther finally advanced these positions—that in every appointment made by Mr. Hastings, he received a sum of money; that a bribe was also given whenever he disobeyed the orders of the Company; that the bribes were received against the orders of the Company; that they were not intended for the use of the Company, and ought not to have been taken even for the use of the Company, being a disgrace and degradation to Government, to the British character, and an outrage on the laws of God and Nature.

Mr. Anstruther concluded a speech he was *three hours* and a half in delivering, with informing their Lordships, that he would next proceed to lay before them the evidence with which he meant to support his different assertions,

But it being then half past four o'clock, their Lordships thought proper to adjourn.

FIFTY-SIXTH DAY.

THURSDAY, Feb. 18.

Mr. Anstruther proceeded to the proofs of the various allegations against Mr. Hastings which he made in his opening speech.

From the meeting till the rising of the Court, little other than *written* evidence was given, the reading of which was neither amusing nor interesting, though the substance of the papers read was very material.

The first document that was read was a letter from Mr. Hastings to the Court of Directors of the East India Company, in which he informed the Court that he had advanced to the Company three *lacks* of *rupees*, but that the money was not his own: that two-thirds of it he had borrowed for the Company, and the remaining lack was in fact the Company's own property, as it was the produce of a *Present* which he had accepted for their use.

Other papers were afterwards produced and read, which proved, that Mr. Hastings had in the above letter disclaimed all property in the whole or any part of these three lacks of *rupees*: he afterwards took bonds from the Company for the amount of the whole, and thus made the Company debtors to him for their own money. The papers further proved, that the bonds were afterwards given up for bills of exchange on the Company, payable in England to Mr. Hastings, or order, which bills were in due time taken up by the Court of Directors, and the amount of them actually paid to the Agent of Mr. Hastings.

The original bonds and bills of exchange were produced in Court by a Clerk in the Treasurer's Office at the India House.

Mr. Anstruther proved next, that the letter in which Mr. Hastings made the Court of Directors acquainted with the receipt of the above Presents, was not written till Mr. Hastings knew that Mr. Francis was on the point of returning to Europe, though he had received the Presents a long time before that period.

Mr. Anstruther informed their Lordships, that he would next produce

duce various papers to prove, that the above letter, though written by Mr. Hastings *apparently* with a view to make *discoveries* of Presents received, was in fact a letter of *concealment*, by means of which he hoped he should be able to prevent the Court of Directors from making any enquiry into the business of Presents.

To do this, Mr. Anstruther produced another letter, written by Mr. Hastings, by means of which he meant to shew, that the writer had falsified and contradicted his former account of this matter.

Mr. Law said, he objected not to the production of this letter, provided the Hon. Manager did not mean to make any other use of it than that of making Mr. Hastings falsify the former accounts given by himself of this matter.

Mr. Anstruther replied, that it was not necessary for him to say more on this subject, than that the letter which he was going to give in evidence, was applicable to the object for which it was to be produced. Whether it would apply to any other object or not, might be a subject of discussion hereafter.

The letter, which was very long, was read; and appeared to be calculated to discredit the former account given by Mr. Hastings of the Presents he had received.

Mr. Anstruther proceeded next to the charge relative to the bribe or Present received by Mr. Hastings from Rajah Nobkissen.

The amount of this Present he said he could no otherwise ascertain, than by laying before their Lordships the accounts which Mr. Hastings, in one of his letters, gave of the manner and objects to which he had applied it.

Mr. Law again interfered, and said, that as long as the Hon. Manager wished only to falsify the accounts given by Mr. Hastings of the Presents he had received, it was not his intention to object to the letter in question; on the contrary, he would be ready to admit it as evidence. But if any part of the letter should be urged by the Hon. Manager in support of a part of the Charge relative to the Presents, which was worded so *generally*, that Mr. Hastings ~~could not be~~ called upon to make any defence against it, he certainly would object to it. The part to which he alluded as being too *generally*

worded, to be considered as a Charge to which Mr. Hastings was bound in law to reply, was that which accused him of having taken bribes or Presents from "persons known and unknown."—To such a charge, which contained nothing *specific*, no answer could be required, and therefore no evidence should be received in support of it.

Mr. Anstruther replied, that if the evidence which he offered was applicable to the whole or to any part of the Charge, it was legal evidence, and must be received; their Lordships could not reject it upon the ground that hereafter the Managers might possibly endeavour to extend the application of it.

The Lord Chancellor considered the letter which the Hon. Manager had produced, as applicable to the object for which he had produced it. It would be the business of the Court to see that, as no evidence should be rejected that was applicable to a part of the Charge, so no evidence should be extended to any thing to which it was not applicable.

If a Charge was so *generally* worded that a defendant could not, in the nature of things, make a defence against it, it was the duty of the Court not to suffer any evidence to be given in support of it. And this for two very substantial reasons—One, that it was impossible that any defendant should be prepared or able to make a defence against a Charge that did not contain *specific* allegations.

The other, that the Court could not pronounce any judgment, when no crime was *specifically* charged.

The Managers appeared to be thoroughly of his Lordship's opinion.—The letter was read without further opposition.

Mr. Anstruther then reminded their Lordships, that Mr. Hastings, in one of his letters already in evidence, speaking of the present of *ten lacks* of rupees, 100,000l. sterling, received by him at Chunar from the Nabob of Oude, assigned as a reason for not having disclosed the receipt of it much sooner, that the Present had been made to him in *bills* on Goopal Dols; that this man was certainly a very great banker, but at the time Mr. Hastings received the bills, Goopal Dols was a *prisoner* to Cheyt Sing; and therefore as he did not know at the time that he ever should get any thing for these bills, he

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did not think it necessary to say any thing about them to the Court of Directors.

Mr. Anstruther said, he would produce evidence that this account was false; and that at the very moment when, according to Mr. Hastings, it was uncertain whether he should ever get any thing for these bills, he had actually discounted by far the greatest part of them, and absolutely received in cash 94,000*l.* sterling, so that at the time there remained only 6000*l.* of the whole sum unpaid.

Mr. Anstruther proved this by a clerk and some books from the India-House—and here the evidence rested for this day.

The Lords rose at half past four o'clock, and adjourned to Tuesday the 23*d.*

FIFTY-SEVENTH DAY.

TUESDAY, Feb. 23.

This day Mr. Anstruther informed the Lords, that he was going to lay before them in evidence the opinion which Mr. Hastings himself had given in Council, and transmitted by him to the Court of Directors, respecting the management of the revenue in Bengal; his departure afterwards from that opinion, and the establishment, under his own influence and direction, of a Revenue Board upon principles which, according to his former opinion, must necessarily be injurious to the revenue, to the people of Bengal, and to the Company's interest.

Mr. Anstruther further said, this evidence would shew that it was from corrupt motives, and for corrupt purposes, that Mr. Hastings had at last established that very administration which he had represented to the Court of Directors as pregnant with every species of mischief, as well to the Company as to the unfortunate natives of Bengal.

Mr. Law objected to the evidence as inadmissible, because it was to prove a fact which did not appear to be criminal. It was not a crime in any man to entertain different opinions at different times. He might, without the smallest ground for an impeachment of his integrity, think to-day that a thing was improper, and to-morrow see no impropriety in it. To change the mode of managing the revenue was not a criminal act; and if he were to admit,

without giving the Managers the trouble of proving it, that Mr. Hastings had changed the mode of collecting and managing the revenue, their Lordships could pronounce no judgment upon him for it, because it was not a criminal act.

Gentlemen might say that a thing was done *corruptly* and *wickedly*; but if the thing done was not in itself a crime, a harsh epithet could not make it one, nor could their Lordships take any cognizance of it.

It was the common practice of the law, in all informations for libels, to state that the defendant had *falsely*, *wickedly*, and *maliciously* said or done such a thing. But if the thing said or done was not in itself libellous, the Court would disregard those harsh expressions, and give judgment in favour of the defendant.

This appeared to be the case in the cause of the King against Stratton and others for the imprisonment of Lord Pigot. The information stated that the defendants had imprisoned his Lordship with an intent to seize the government. But this charge relative to the intent, of which no evidence was given, and which had been put into the information only for the purpose of making the act of imprisoning Lord Pigot appear more heinous, being dismissed, the case, stripped of the false colouring, amounted to no more than an act of false imprisonment.

It was so in the present case. The Hon. Manager charged Mr. Hastings with having *wickedly* and *corruptly* altered the mode of managing the revenue in Bengal. Let the words *wickedly* and *corruptly* be taken away, there would remain the bare assertion that Mr. Hastings had changed the mode of managing the revenue; which assertion, however true, contained not, in point of fact, a charge of guilt: but even if it did, it was a charge brought only by the Hon. Manager, and was not to be found in the charges exhibited by the House of Commons; and consequently his client was not bound to give any answer to it.

Mr. Anstruther expressed a wish that the learned Counsel had read the charges before he had ventured to say what they did or did not contain. He said, if he would look into the 27th article of the present charge, he would find that the House of Commons roundly and explicitly charged Mr. Hastings with having

having been induced by *bribes* to make a change in the mode of collecting the revenue—that wherever the change was introduced; it was attended with a bribe—and that every native to whom he had given an employment in the management of the revenue, owed his appointment to a bribe. If this was not criminal conduct in Mr. Hastings, the very essence of *crimes* must have been changed.

When the learned Counsel argued that the allegations contained not a charge of guilt that could give their Lordships a jurisdiction in the case, he seemed to have forgot the situation of his client; for he argued just as if his client had been convicted, and he, as his Counsel, was pleading in arrest of judgment.

The Lord Chancellor caused the 7th article of the Charge to be read; and then agreeing in opinion with Mr. Anstruther, he overruled the objection made by Mr. Law.

The evidence was then read, and was not ended till five o'clock, when their Lordships adjourned.

FIFTY-EIGHTH DAY.

THURSDAY, Feb. 25.

Mr. Anstruther opened the business of the day, by informing their Lordships that he intended to produce evidence to shew that the new arrangement made by Mr. Hastings in the revenue department had prodigiously increased the expence of management.—He then called Mr. Wright of the East India Company's Accountant's Office.

From the evidence given by this witness, it appeared that the expence attending the management of the revenue amounted in 1771-2, under the old system, to 41 lacks of rupees—in 1781, to 56 lacks; and that at last, under the new system introduced by Mr. Hastings, it exceeded 73 lacks.

Hence their Lordships might easily infer, Mr. Anstruther observed, whether the change of system which was part of the present charge against Mr. Hastings, could possibly have for its object the benefit of the Company.

He next proceeded to shew the character of Gunga Govin Sing, whom Mr. Hastings had appointed *Deewan* of Bengal, and in whose hands the members of the new Board of Revenue could be considered only as tools.

From the Company's books he proved

PART III.

ed, that not only this man bore a very bad character, but that Mr. Hastings knew it well at the time he gave him the appointment.

He proved also, that on account of the appointment of so improper a person to so important a situation, Mr. Hastings had been censured by the Court of Directors.

Mr. Anstruther was next proceeding to produce evidence, to shew that Kelleram, to whom, in conjunction with Cullenam Sing, Mr. Hastings had given the Collectorship of *Babar*, and from whom he had received four lacks of rupees, or 40,000l. sterling, the price of such appointment, was the most unfit person in the world for the office to which he was appointed.

Mr. Law here interrupted the Hon. Manager, and objected to the evidence which he was going to produce. The ground of his objection was, that the unsuitness of Kelleram for the place to which he had been appointed, formed no part of the charge brought by the House of Commons against Mr. Hastings. The Hon. Manager, he said, was at liberty to prove the appointment of Kelleram, and the Present given by him to Mr. Hastings, for these two points were in charge against his client; but the unsuitness of Kelleram for the place formed no part whatever of the charge.

Mr. Anstruther insisted that the unsuitness of Kelleram did form a part of the charge; for their Lordships would see that the concluding article of the charge stated, that through the whole business Mr. Hastings had acted from corrupt motives. Now one of the best proofs of a corrupt motive was, the employment of a bankrupt, and man of bad character, to an important department in the Revenue; and when to this it was added, that such a person so appointed had given a bribe of 40,000l. for the place, no doubt could be entertained of the corruption of him who had appointed such a man. The character of Kelleram would go the whole length of determining whether Mr. Hastings, in employing him, had, or had not, acted from corrupt motives; and therefore the Managers ought to be at liberty, in proving that the motives were corrupt, to give in evidence the character of Kelleram, which would be found to be such as should have excluded him from any place of trust.

Mr. Burke considered the objection started

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started by the learned Counsel as untenable. If it were admitted, it would put the Managers in a situation the most awkward. It was founded on the same principle with the decision made in another place, where *feeling*, not *reason* prevailed, and which awarded the pound of flesh due by virtue of the bond, but threatened with death the person who, in taking what was thus awarded, should spill a drop of blood.

The Managers wanted to prove that in the appointment of Kellaram Mr. Hastings was influenced by corrupt motives. It was admitted by the learned Counsel that this they were at liberty to do, because it was in charge that his client had acted from such motives.

The Managers, finding that a Governor-General not only did not appoint a fit man, but the most unfit man in the world, to an important trust, they naturally concluded that the appointment must have been *purchased*—else the Governor-General would not have taken into the Company's service a man who of all others ought to be dismissed from it.

They were proceeding then to shew the character of the man thus appointed, when the learned Counsel interrupted them, and told them that they might, if they could, prove the motives of Mr. Hastings to have been corrupt; but they must not prove this by giving in evidence the character of Kellaram; as the unsuitness of that man did not appear in so many words to form any part of the charge brought by the Commons against Mr. Hastings.

This was calling for proof, and at the same time withholding the means. The Commons never could have had it in contemplation to charge any man with an act as criminal, which, unconnected with any circumstance, might be deemed not only innocent but meritorious. There was no crime, to speak abstractedly, in receiving a Present, and therefore when the Commons charged Mr. Hastings with receiving one, they surely meant to say that the *motive* which induced him to take it made it criminal. Their Lordships were bound to enquire, and the Commons to shew, *quo animo* Mr. Hastings received this Present; because it was upon that point that his guilt or his innocence turned.

If then their Lordships should pre-

vent the Commons from shewing that the motive which had induced Mr. Hastings to take this Present must have been corrupt, because he would not otherwise have taken from a gaol a man who was equally a bankrupt in character and fortune, and placed him at the head of the revenue of a great Company, they would by implication admit the right of the Commons to bring impeachments, but at the same time render them of no effect, by preventing them from producing the evidence that would support them.

The prisoner, he said, had in his answer to this charge admitted the fact that he had received the Present, but said that he had taken it for the use and benefit of the Company. This was denied by the Commons; and upon this they were at issue with Mr. Hastings. What was the issue between them? Not the receipt of the money, that was charged on one side, and admitted on the other; but the motive which induced him to take it. If, then, the Commons were to be debarred from giving evidence of this motive, which from the nature of the thing could not be discovered but from circumstances, then they would find themselves deprived of the means of proving the issue joined both by them and the prisoner.

The Lords, having heard both sides, withdrew to the Chamber of Parliament, to take the objection. They returned in about half an hour; and the Lord Chancellor informed the Managers that their Lordships had resolved that they (the Managers) should be restrained from giving evidence of the character of Kellaram; the unsuitness of that man for the office to which he was appointed, not being in charge against the defendant.

Mr. Burke begged leave, with all due deference, to make some few observations relative to the decision which their Lordships had just made: he said, that the Commons of England had, in all ages, and in every case of impeachment, disclaimed all knowledge of *pleadings*, and had, on that very account, ever maintained it to be their right, to have charges brought by them treated with much less nicety, than indictments preferred by those who had studied *pleading as a science*, and made it their *profession*. The Commons had always said that they were not clerks, but

but plain simple laymen, and as such they pursued the ends of justice without the niceties of *special pleading*.

It was clear that the Commons, whatever might have been the *wording* of their charge, meant to accuse Mr. Hastings of having taken a bribe for the appointment of a man to a place for which he was totally unfit.

This unfitness they thought might be easily deduced from the manner in which they had worded their charge: what must they think, then, when they should find themselves debarred from giving evidence of that unfitness merely because it was not set forth in a *technical* manner in the charge! The Commons were not bound to plead *technically*; they spoke not the language of *science*, but of *reason* and *plain sense*; and by that alone had they ever attempted to bring down punishment on public delinquents.

He did not mean, he said, to speak disrespectfully or retrospectively of the decision which their Lordships had just made; but he must say that it would greatly embarrass all the future proceedings of the Managers. For if they were to be debarred from giving evidence of corrupt intentions, and of aggravations arising from circumstances, it would *specifically* stated in the charges, it would be impossible for their Lordships to determine the amount of the *fine* which ought to be imposed upon the prisoner, if he should be convicted.

The *quantum* of fine must necessarily depend upon the more or less aggravating circumstances of the case; but if the Commons were to be restrained from giving evidence of those circumstances, their Lordships must in the end be embarrassed by their own decision.

If a man was to take a Present contrary to the injunction of law, he ought to be punished; but his punishment ought to be less severe than that of a man who should be convicted of having *sold justice*; yet even such a man ought not to be so severely punished as a person who had oppressed nations, destroyed the revenue of a country, and brought ruin upon its inhabitants. But if the accusers of the last described person were to be debarred from giving evidence of those dreadful consequences of his *corruption*, *speculation*, and rapacity, then must his punishment, on conviction of having received Presents, be as gentle and as light as that of the

first described person who should merely have taken a Present contrary to the injunction of a law, but without any serious consequences either to any individual or to society.

The principle on which their Lordships had decided was unquestionably good. It was, that no man should be called upon to defend himself against anything which was not in charge against him, because he could not be prepared to answer charges brought incidentally in the course of a trial for other crimes, nor could the Court give any judgment upon it.

But this principle, however good, did not apply to Mr. Hastings; for he knew well, for the last three years, that the bad character of Kellaram was considered as a proof, and urged as such in the House of Commons, of his having been influenced by bribes, or he never would have employed such a man in the Company's service.

Mr. Burke said, he wished that before their Lordships had made the case on which they had come to the decision, from which he apprehended much embarrassment in the course of the trial, they had called upon the Managers and the Counsel for the defendant, to state the case in their way, as was the case in other Courts; for from the manner in which their Lordships had worded this cause, he doubted whether they had yet decided the main question between the Managers and the learned Counsel.

Mr. Burke was proceeding to shew that it appeared very clearly from the hired abuse poured daily on the Managers, that the full extent of what they meant to give in evidence against the prisoner, was well known to the hired libellers and their principals; but Mr. Law representing this as irrelevant, Mr. Burke did not proceed.

Evidence was then produced by Mr. Anstruther, of the orders of the Court of Directors, that the ancient Zemindars, who paid their rents regularly, should not be dispossessed of their lands, and that none should be let to any person in the service of the Company.

Evidence was given of the proposal made by Kellaram for farming the revenue of Bâhar, in partnership with Cullenam—of the order given by Mr. Hastings for his attendance at Calcutta—for a guard of Sepoys to escort him—and, finally, of the success of his proposal.

It was five o'clock by the time Mr. Anstruther had got thus far—and then their Lordships adjourned to THURSDAY, April 22.

FIFTY-NINTH DAY.
THURSDAY, April 22.

Mr. Anstruther opened the business of the day, by informing their Lordships, that he was going to proceed upon that part of the charge which related to a lease made by Mr. Hastings to Kellaram, and the BRIBE which was the consideration that had induced him to make a lease to such a person.

The proof of the receipt of *four lacks of rupees*, or between 40,000*l.* and 50,000*l.* from Kellaram, was unnecessary, as Mr. Hastings, in his answer to the charge, had admitted the receipt of that sum from that person.

It remained, therefore, to determine whether it had been received from a corrupt motive, and for the personal use of the receiver, as the Managers contended; or for the use of the Company, as Mr. Hastings asserted.

Mr. Anstruther, intending to prove the motive to have been corrupt, and that the lease granted to Kellaram was the consequence of a bribe corruptly received, began by proving from the Bengal consultations, signed and transmitted by Mr. Hastings, that a *sumut*, by which the revenues of the kingdom of Bahar were farmed, had been made to Kellaram, the person from whom Mr. Hastings admitted that he had received *four lacks of rupees*, at the annual rent of 36 lacks, for as long a term as he should punctually pay that rent; so that if the rent was always punctually paid, the lease might be considered as a lease for ever.

Mr. Anstruther then proceeded to state, that he was going to prove, that this lease had been injurious to the Company; that Kellaram had not made good his engagements, and that the Company had in consequence suffered great loss, to the amount of not less than ten or twelve lacks.

Here Mr. Law, on behalf of the prisoner, objected to the production of the evidence stated by Mr. Anstruther; and this objection took up the time of the Court the rest of the day.

If we were to follow the line of argument pursued by the three gentlemen who are of Counsel for Mr. Hastings, and by Mr. Fox, Mr. Burke, and Mr. Anstruther, on the part of the Commons, we should require more room for our report, than the plan of this publication would allow. We shall therefore, with as much brevity as is consistent with perspicuity, endeavour to give our readers a distinct idea of the grounds and merits of the objection.

On one hand it was argued, that nothing could be received in evidence, that referred to any thing not specified in the charge.

It was answered, that the charge stated a corrupt receipt of money; and the evidence offered was calculated to shew, from a variety of circumstances, that the lease never would have been granted, if Mr. Hastings had not been influenced by a *bribe*.

It was contended, that if the failure of Kellaram to make good his engagement by paying his rent punctually, had been thought by the Commons to have been a proof of a corrupt intention in Mr. Hastings, that circumstance ought to have been specified in the charge: the evidence offered by the Managers would then have been admissible. But as the circumstances had not been specified, the Managers were precluded from giving any evidence respecting it, for this best of all reasons, because it was not in charge.

In answer, it was contended, that the *substance* of the circumstance was in charge; for the article stated, that the grant of the lease was prejudicial and injurious to the East-India Company. And it would be useless for the Commons to make this charge, if they were to be precluded from shewing how and to what degree the lease had been prejudicial.

On the other hand, it was said, that from the words of the charge, it was the *perpetuity* of the lease that made the agreement prejudicial to the Company.

The Managers replied, that this construction of the words was not warranted; for the ground of the whole charge was *corruption*; a lease *honestly* made might turn out to be prejudicial to the ~~Company~~ without affording from that single circumstance, the

the least ground for a criminal charge against the steward who made it. It was the original *corruption*, inducing Mr. Hastings to make a lease, which, it was clear from the beginning must turn out to the prejudice of the Company, that made him criminal, and not merely the perpetuity of the lease, which at best could be considered only as a circumstantial proof of corruption, and not the main ground of a charge. The Commons insisted, that from the character of Kelloram, it must have struck any man, who was as well acquainted with it as Mr. Hastings was, that the bargain *would* turn out to be injurious to the Company: the best way to prove that proposition was, to shew that in point of fact it *had* been injurious.

The Counsel said, the proof offered would, if admitted, amount to an *extension* of the charge; and an extension of a charge was what the law would not admit.

The answer was, that the proof offered would not at all extend the charge: the charge was *corruption*, —the proof would demonstrate the *corruption*, and no more. It was not therefore to extend the charge, but to shew the *aggravating* circumstances of the offence, that the evidence was offered. The proof that the Company *had* lost by the lease, was but a medium to shew that the lease originated in corruption, and that what had actually happened, Mr. Hastings must have foreseen; but that the *BRIBE* had made him shut his eyes against it.

To this it was replied, that if the evidence was calculated merely to aggravate the offence, this was not the stage for such evidence: it would come in properly, when their Lordships should be about to give judgment.

The Managers said, it was a matter of indifference to them in what stage of the proceedings they gave this evidence, provided they were assured that in any stage of it they should be suffered to give it. But they found, on a perusal of the State Trials, that there was no instance of such a proceeding in the House of Lords, as evidence received in *aggravation* or *extenuation* BETWEEN the time that their Lordships declared the accused guilty, and the time when they pronounced judgment.

In answer to this, it was said, that in the Court of King's Bench, such

evidence was always received, before the Court passed judgment; the Managers could therefore have no reason for supposing, that a similar practice did not obtain in the House of Lords.

The Managers replied, that the reason for such a proceeding in the Courts below, did not apply to the House of Lords. In the former, the JURY tried the FACT; the Court applied the LAW and passed the SENTENCE. As matter of AGGRAVATION or EXTENUATION, applied to the discretion of the COURT, and was not the *essence* of the *fact*, it was not submitted to the JURY; but it was very properly submitted to the COURT after the verdict was found, because there it could have weight, and make the judgment more or less severe, according to the aggravating or extenuating circumstances.

But the case was very different in the House of Lords, where their Lordships were JUDGES of the FACT, as well as of the LAW; and therefore the evidence of aggravation or extenuation might be given at the same time with that of the fact. And it was presumed that this was the ground of the practice which prevailed in the House of Lords, where there was no stage known, at least to the prosecutors and the prosecuted, between the finding the latter *guilty*, and the passing of the judgment.

It was also contended by the Managers, that as a *misdemeanor* differed from a *felony* in this respect, that there was no specific punishment pointed out by law for the *former*, as there was for the latter, so the Court could not tell what judgment to pronounce, whether gentle or severe, without hearing the circumstances of aggravation or extenuation. The law passed the same sentence on all persons convicted of *murder*; for instance, though there should appear in some of the cases circumstances of infinitely less barbarity than in others. But the law did not put all *misdemeanors* on a level, but left a discretionary power to the Judges, to make the punishment heavier or lighter, according to the different circumstances.

It was said, that circumstances of aggravation or extenuation could not be given on the Trial, though they might afterwards be admitted in mitigation or aggravation of judgment.

This

This was denied by the Managers to be law in the House of Lords, and they referred to the trial on the impeachment of the Earl of Macclesfield, to prove that evidence of aggravating and extenuating circumstances had been given during the trial : and that by far the greatest part of the evidence given by that noble and learned Lord, was evidence of circumstances in extenuation.

The Counsel said, that what the Managers wanted to do, was, on a trial for one crime, to give evidence of another, which was contrary to law.

The Managers maintained the legality of such evidence on several occasions. They instanced a late case in the Court of King's Bench, the King against Dr. Withers, where evidence was given before judgment passed, that the defendant had, since his conviction, published a second libel, more atrocious than the former.

The Counsel, one of whom had pleaded the cause of Dr. Withers, observed, that it was true this second libel had been given in evidence ; but then it was not in the first instance, but adduced to rebut a plea set up by the defendant, that he had corrected his conduct, and ceased to be a libeller. The evidence of this second libel was brought to disprove that assertion.

Mr. Anstouther observed, that the learned Counsel were very inaccurate in stating the case in which one of them had been employed ; for it so happened, that the very reverse of the statement was true. The second libel was given in evidence, not to rebut the above plea, or claim to lenity, but before any such plea had been offered, and with a view to bring down a heavier punishment upon the defendant, by shewing that he was an incorrigible libeller.

At four o'clock the Lords withdrew to their own House, to take into consideration the objection that had given rise to this long argument.

They did not return to Westminster-hall, but sent a message to the House of Commons, stating, that they had adjourned the further proceedings on the Trial till Tuesday next.

SIXTIETH DAY.

TUESDAY, April 27.

The Peers did not take their seats this day till two o'clock. As soon as the House was seated, and the Prisoner had been brought to the Bar,

The Lord Chancellor informed the Managers and the Counsel for the Defendant, that the opinion of the House having been taken upon the objection made on Thursday last, to the evidence offered by the Managers respecting the arrears into which the rents had run under the administration of Kelleram ; their Lordships had resolved, that it was not competent to the Managers to give in evidence the proof of those arrears, the unfitness of Kelleram not being charged in the article of impeachment then under consideration.

Mr. Fox, hearing this, observed, that it was peculiar to the Court which he had then the honour of addressing, to deliver its judgments, without communicating the grounds on which they were formed. In all other Courts the Judges stated the reasons which determined them to make any decisions, and the suitors were thereby instructed how to conduct themselves, and by being informed why one particular article of evidence was admitted, and another rejected, they of course knew the rule by which they could judge, whether what they had to offer in evidence was admissible or not.

But, the practice of their Lordships being different, the Managers were placed in a situation different from that of any prosecutor in the courts below. They found the evidence offered by them declared to be inadmissible ; but as they did not know why it was pronounced to be so, they might at every step offer in evidence, what might by their Lordships be determined to be inadmissible : if the decision was accompanied by the communication of a rule, by which the admissibility or inadmissibility of evidence might be ascertained, this inconvenience would not occur. He hoped, therefore, that their Lordships would contrive some means by which the Managers might learn the grounds and principles which led to their decisions, and by so doing they would relieve the Managers from very great embarrassments, doubts, and uncertainty.

The Lord Chancellor said, it was not for him to expound the resolutions of the House ; that was properly the duty of the House itself : all that he had to do was, in ~~obedience~~ their Lordships' directions, to communicate their resolutions to the Managers and the Defendant.

Mr.

Mr. Fox replied, that he had hoped that the House would have directed his Lordship to communicate at the same time the grounds of those resolutions; for the Managers were really at a loss how to proceed. If they knew why their Lordships had rejected the evidence last offered, they would not offer any more, upon which the motives or reasons for that rejection would attach; and thereby a great deal of time would be saved.

At present the Managers were reduced to the necessity of *guessing* the grounds of the decisions made by their Lordships.

In the case immediately under consideration, many reasons might have concurred to determine the House to come to the resolution read by the learned Lord; he would by way of *guess* state only two. Their Lordships might have rejected the proffered evidence, because they did not think that circumstances of aggravation ought to be admitted in evidence. Or they might have rejected it because they did not think that the rent of the lands leased to Kelloram having fallen into arrear, was a circumstance of aggravation. Could he know which of these two reasons had influenced their Lordships in their decision, he should know how to regulate the future proceeding on this case, and he could tell beforehand what evidence would be admissible, and what not; and such a knowledge would contribute very much to shorten the duration of the Trial, and save all the parties concerned a world of time.

The Lord Chancellor observed, that the resolution which he had communicated to the Managers stated the evidence of the arrear to be inadmissible, because the unsuitness of Kelloram for the situation in which he was placed, was not in charge against the defendant.

Mr. Fox, finding that he could not persuade the House to accompany the communication of its resolutions with the grounds on which they were formed, gave up the point.

Mr. Anstruther then called Mr. Hudson, of the India-House, to prove that Mr. Hastings had farmed the revenue of Bahar to Kelloram and Cullian Sing, without having taken any other than their own personal security.

Mr. Law wanted to prove that one of them had a Jaghire in that very province, worth a lack and a half of rupees a-year; but the witness knew nothing of such a Jaghire; he knew only that one of them had an allowance of 50,000 rupees a-year out of a Jaghire.

Mr. Young was next called. He had been a member of the Provincial Board of Revenue at Patna. He knew Kelloram, and did not think that the reserved rent upon the lease was so low, that he could have afforded to give Mr. Hastings 40,000l. sterling by way of fine for the lease.

[We have already informed our readers, that Mr. Hastings had admitted the receipt of this sum, which he said he had taken for the Company's use.]

He was asked if he had ever had any conversation with Mr. Hastings on the subject of Kelloram, and the lease made to him of the revenues of Bahar. He replied, that he had had a conversation once with Mr. Hastings on that subject, at Calcutta.

Mr. Anstruther desired that he would state to the Court the substance of it, as accurately as he could.

Mr. Young said, that Mr. Hastings having informed him that he had agreed, or was about to agree, to farm the revenue of Bahar to Kelloram, he said he wondered that he should think of farming it to such a man, for, from what he knew of him, he was the last person to whom he ought to grant a lease of it: to this Mr. Hastings replied, that he himself thought better of Kelloram.

Here Mr. Law interposed, and objected to the admissibility of this conversation as evidence, because it was clear that it turned upon the *unsuitness* of Kelloram, which their Lordships, by their last decision, had declared was not in charge.

But the Lord Chancellor observing that this conversation relating expressly to Kelloram, and to the lease made to him, which it was in charge had been corruptly granted, he did not see how the objection could lie; Mr. Law thought proper to waive it.

Mr. Young then proceeded—He said, that in reply to Mr. Hastings he made use of the following words, or others to the same effect; “I have known Kelloram five or six years; it is from
“that

"that knowledge I have formed the opinion I have given of him; and an opinion so formed I cannot give up."

Mr. Anstruther then asked, What was the duty of the *Dewan*? Mr. Young said, that the *Dewan* was to check and controul the Farmer General of the Revenue, and prevent him from plundering or oppressing the people.

It was afterwards proved that the office of *Dewan* was abolished in Bahar; or, what was the same thing, that it was bestowed on the Farmer General, who was thus absurdly appointed to check and controul himself.

Mr. Anstruther asked what was the impression which this appointment made upon the people of the province at large.

Mr. Young said, they heard it with terror and dismay.

After the *recess* was given, Mr. Law objected to the *question*; the witness, he said, could answer only for himself, not for a whole province.

Mr. Fox said, that nothing was more common in a court of law, than the practice of giving in evidence the general sense of the country or neighbourhood; and no one could more properly state what was, or had been the sense of a country, than a person who had long resided in it; and had been in a situation that enabled him to learn the general opinion of it.

Mr. Law standing to his objection, their Lordships returned to their own House, and having put a question on this case to the Judges, which they required time to answer, the House adjourned the further proceedings in the Trial to Thursday next.

SIXTY-FIRST DAY.

THURSDAY, April 29.

As soon as the Court was seated, and the prisoner had been brought to the Bar, the Lord Chancellor informed the Managers, that the House had resolved that it was not competent to the Managers to put the question, "What was the sense or opinion of the people of the country in general, when they heard that the revenue had been farmed to Kelloram and Cullian Sing"—such question not being applicable to the 6th Article of the Charge.

Mr. Fox took occasion, on hearing this decision, again to lament that the Managers were put into a situation, in which no party whatever, in any other Court in the kingdom, whether as plaintiff or defendant, prosecutor or prosecuted, had ever stood—for they were called upon to govern their conduct by decisions, the principles of which were wholly unknown to them; all that was communicated to them was the bare naked determination of their Lordships; but the principles on which it was founded, and which alone could be rules of conduct to the Managers, the House had not condescended to communicate; and therefore, if hereafter the Managers should offer evidence which should appear to their Lordships to be inadmissible, according to principles known to themselves, but not communicated to the Managers, their Lordships, he hoped, would not think that the Commons were to blame; for they certainly would not give the Court the trouble of deciding a second time upon any one species of evidence, if they knew the grounds on which any decision in one case was founded, that would attach upon another coming under the same description.

He begged leave also to observe, that when their Lordships came to the resolution just communicated by the noble and learned Lord, they seemed to have mistaken one point, for they rejected the evidence as inapplicable to the 6th Article of the Charge; but it was certainly applicable to the 7th, which was then under consideration as well as the 6th.

Many more observations were made by Mr. Fox and Mr. Burke on this head, and nearly to the same purport.

Mr. Anstruther then resumed the examination of Mr. Young. He asked the witness, Whether he knew of any, and what effects, that had been produced in the country by the appointment of Kelloram?

Mr. Law objected to the question: he said, this was an attempt to introduce, in a new shape, what their Lordships had resolved to be inadmissible as evidence. The effects of the appointment, whatever they might be, were not specified in the charge, and therefore the Managers could not give them in evidence.

This produced a long argument, in which the objection was strongly combated.

combated by Mr. Fox, Mr. Burke, and Mr. Wyndham.

They contended that they were entitled to give in evidence every circumstance that could in any degree establish a proof of guilt, or shew its enormity and aggravation. That in some cases it was by circumstances only, that an act in itself harmless or indifferent became criminal.—The bare abolition of one Board of Revenue, and the establishment of another, were not in themselves criminal acts; but if it should appear that they been done from corrupt motives, and in consequence of a bribe, then they might truly be said to be criminal: but the crime could be proved only by evidence of those circumstances, from which corrupt motives could and ought to be inferred; this would appear strikingly in a case of homicide. If evidence of *motives* was shut out, and none received but that of the bare act of *slaying*, then might a man be put to death for a homicide not only not malicious, but absolutely justifiable.

In some cases, guilt might be inferred from two acts, neither of which, taken separately, could be considered as involving guilt.—To appoint a man a judge, was not a crime;—to receive a present was not a crime: but if, by any circumstances, these two acts could be coupled together, and it could be made to appear that one was the cause of the other, then the appointment, which in itself appeared to be innocent, must be considered as criminal, by being considered as the effect of a bribe. The *corruption*, then, was what constituted the crime; but how could it be proved, if the evidence of those circumstances was to be shut out, by which alone two acts, in themselves innocent when viewed singly, could, on being coupled, be deemed criminal?

After the Managers had argued long and ably on the subject, they said they would not give the House the trouble of leaving the Hall to debate upon this question, if they could find that their Lordships considered it as already decided.

Lord Stanhope, adverting to what Mr. Fox had said at the outset, said, that the principles on which the decisions of their Lordships were founded, might, in his opinion, be collected from the manner in which those de-

cisions were communicated. One of them stated that no evidence was to be admitted of the unfitness of Kellaram: but it did not stop there, it went further, and stated the reason, namely, the unfitness of Kellaram not being charged.

The last decision determined, that no evidence of the opinion of the people respecting the appointment of Kellaram should be received; and the reason was immediately subjoined,—because it was not applicable to the 6th Article of Charge.

This produced some further observations from the Managers; but, collecting from some appearances that the sense of the House was against the question respecting the effects of Kellaram's appointment, the Managers gave it up.

Mr. Anstruther then proceeded to examine Mr. Young relative to Gunga Govind Sing, who, on the suppression of the Provincial Committees of Revenue, was by Mr. Hallings constituted Dewan to the General Board of Revenue, with a jurisdiction that extended to every part of the Revenue of Bengal.

From the evidence of Mr. Young, it appeared that Gunga Govind Sing was considered, both by the natives and Europeans, as a man of VERY BAD CHARACTER; that his office of Dewan gave him great power and authority over the people; that from the constitution of the new Board of Revenue, both the Dewan and the Board were more immediately dependant upon the Governor General, than upon the Governor and Council; and that the Dewan had abundantly the means of harassing and oppressing the people.

Mr. Anstruther having desired that Mr. Young would state whether the country had or had not been oppressed by Gunga Govind Sing, Mr. Law interposed, and said, that no evidence of acts of oppression ought to be admitted, because oppression was not charged in the Article. It was true, indeed, that at the end of it the Commons had said, "to the great oppression and injury of the said people;" but these words must be considered as *inferences of law*, and not *substantive charges*, and precisely in the nature of these words in indictments, "contrary to the Peace of our Lord the King, his Crown, and Dignity."

No evidence had ever been admitted in any Court in support of these words, which were inferences of law; nor ought any evidence to be admitted in support of the general words, "to the oppression and injury of the people," which, like the others, were only inferences of law.

This produced another long argument.

Mr. Burke insisted that the words meant to charge factitious acts of oppression; he indicated the attempt of the Counsel to metamorphose them into mere *inferences of law*.—"To tie a father and son together, and scourge them cruelly, was an *inference of law*.—To force people's money from them by tortures of every kind, was an *inference of law*.—To do the most savage acts, was an *inference of law*."

Mr. Fox contended that there was no analogy between the words in the charge stating the injuries and oppressions sustained by the natives, and the words, "contrary to the King's peace, his Crown, and Dignity."—If no evidence had ever been admitted to prove that an act was contrary to the Peace, Crown, and Dignity of the King, it was because the act itself implied it; in a charge of treason, murder, or any species of felony, it was sufficient to prove the act of treason or felony, for it followed of course, that if the act had ever taken place, it was in its nature contrary to the Peace, Crown, and Dignity of the King.

But when the appointment of Gunga Govind Sing was proved, the proof of the appointment could not be a proof of the oppressions; because, legally speaking, oppression could not be inferred from a mere appointment.

Mr. Fox then viewed the objection in another light. He contended, that the Commons of Great Britain were not, according to the usages of the High Court of Parliament, bound to state their charges with the same precision, to which special pleaders were bound in the Courts below: the Commons were, in the language of the constitution of Parliament, *plain unlettered laymen*, and not bound by forms of which the constitution considered them as wholly ignorant: and he contended that he spoke sound law, when he maintained that a want of form which would vitiate an indictment in the Courts below, could

not be pleaded in the High Court of Parliament, either in bar to an impeachment, or to shut out any evidence offered by the Commons in support of their charge.

He supported his opinion by the authority of Sir Robert Walpole, and the Attorney General Northey, who maintained the same, when as Managers they conducted the prosecution of Lord Winton.

The charge sent up by the Commons on that occasion did not set forth *on what day* the treason of which that noble Lord was accused had been committed. Such an omission would have proved fatal to an indictment in the Courts below; and the Counsel for Lord Winton endeavoured to avail themselves of it in arrest of judgment: Sir Robert Walpole, who, whatever people might think of him as a Minister, was allowed even by his enemies to be extremely well versed in the LAW OF PARLIAMENT, resisted the motion in arrest of judgment, as did also his fellow Manager Northey, the then Attorney General (whose arguments on this point Mr. Fox read from the State Trials), on this precise ground, that the Commons of Great Britain were not bound to be special pleaders; and that substantial justice was not to be evaded, merely because they were not versed in all technical expressions and forms of law.

On that occasion the House of Lords took the opinion of the Judges, and, though it appeared to be in favour of the arrest of judgment, the House decided in favour of the doctrine maintained by Sir Robert Walpole, and refused to arrest the judgment. This case, Mr. Fox observed, was the stronger, as the judgment to be passed upon Lord Winton, and which actually did pass, was a judgment of DEATH.

The three Counsel for Mr. Hastings supported the objection *seriatim*, and Mr. Fox replied to them.

A question was then taken down by the Lord Chancellor upon this objection for the decision of the House; and the Lords adjourned the Court, it being then a quarter before six o'clock.

SIXTY SECOND DAY.

TUESDAY, May 4.

This day, the Court being seated, and the prisoner appearing at the Bar, the Lord Chancellor reported to the Managers

Managers and the Counsel, for the prisoner, the opinion of the Haute on the question put to Mr. Young on Thursday last, viz. "Whether the oppressions felt by the people were greater under the new Board of Revenue established by Mr. Hastings, or under the old one?"

The Lord Chancellor informed the parties concerned, that their Lordship had resolved that it was *not* competent to the Managers to put this question.

Mr. Burke, upon this, observed, that he must *submit* to their Lordships' decision, but he never could *acquiesce* in it.

He desired that Mr. Young should be again called; and the witness appearing, Mr. Burke desired that he might be asked, whether he had heard that any money had been given by Kellaram and Cullean Sing to Mr. Hastings.

Mr. Law objected to the question; he said that *hearsay* evidence could not be admitted against his client.

Mr. Burke insisted that it could; and if it was necessary, he would state his reasons in proof of this position.

Mr. Law desired that he would state how the evidence would apply, before the witness should give an answer to the question.

Mr. Burke said, that, finding new principles of law laid down, which in his opinion tended to overturn the established rules of justice, he would make a stand where he then was, in favour of those rules, and refuse to do what the learned Gentleman required.

The rules of evidence did not oblige him, before he brought forward any piece of evidence, to shew how it would apply; and if he had hitherto done this, it was not because he was bound to do it, but because he wished that the Court might be fully apprized before-hand of the nature and tendency of every article of evidence: he would not, however, pursue that line of proceeding, if he was told by the Counsel that he *must* pursue it.

In the part of the Charge upon which he then was, *hearsay* evidence was of the utmost importance, because it should be made to appear, that no knowledge of the receipt of many large sums of money, by Mr. Hastings, ever could have been acquired, if it had not been for rumours and hearsays.

The rumours, which began to grow general, that Mr. Hastings had received privately and corruptly many large sums, had had such an effect upon Mr. Hastings, that he then disclosed the receipt of those sums, which, had it not been for these reports, he would have kept for his own private use. By these rumours, therefore, it was that these concealed sums had been brought to light; and therefore these rumours, well proved, became good and *leg* evidence.

Mr. Law said, that no proof could be adduced that any sum of money had been concealed by Mr. Hastings, as such concealment formed no part of the Charge against him.

Mr. Burke with some warmth replied, that these objections should avail the learned Counsel nothing; for he would not give up his point, but, like Lieut. Riou, he would stick to his case while he had a single plank to support him. He contended, that concealment was in charge against Mr. Hastings; and that though his Counsel thought proper to deny it then, he had not thought of denying it when he drew up his client's answers to the different charges; for in his answer to the present charge, he admitted that concealment was in charge, and he denied that he had concealed any sum or sums of money. Upon this the Managers and the prisoner had joined issue; but now the learned Counsel would disavow what he had admitted in his pleadings.

Mr. Law replied, that it was of no consequence what he had or had not admitted in his answers. All that he had to consider was, what was in charge against his client.

The concealment of sums of money certainly was not in charge; it was to be found only in the concluding sweeping clause of the article, in that place where it must be considered as an inference of law, and not as a matter of charge.

Mr. Fox considered the evidence of rumours as strictly legal and admissible in the present case. It was evident that the defendant was charged with the *corrupt* receipt of several sums of money.—There could not be a better possible proof of *corruption* in the receipt, than the *concealment* of the sums received: and if the discovery of the receipt was made *after* the rumours began

began to spread, and not *before*, the rumours ought to be the more readily admitted in evidence, as the discovery must be considered as the consequence or effect of these very rumours. And therefore, though the Managers should not have charged the Defendant with having concealed money, still proofs of the concealment might and ought to be admitted, because the concealment was of itself evidence of the strong likelihood that the sums concealed had been corruptly received; and the corrupt receipt was unquestionably in charge.

Mr. Law said, that in this point of view rumours might become evidence.

The question was then put in this way.—The dates of Mr. Hastings's letter, for it was written at different periods, in which he disclosed the receipt of those sums, having been stated to the witness, he was asked, whether, prior to any of these dates, he had heard rumours that Mr. Hastings had received sums of money from Kolleram and Cullen Singh.

His answer was, that he had heard rumours to that effect, prior to any of the dates that had been mentioned to him; and the rumours were very general.

He was asked in a cross-examination, by Mr. Plomer, of Counsel for Mr. Hastings, whether he had not on a former occasion said, that he condemned the establishment of the New Revenue Board by Mr. Hastings, because it was injurious to his own private interest. He answered, that he condemned it both as injurious to his own private interest, and to that of the East India Company.

Mr. David Anderson was next called. He said he had been appointed President of the New Revenue Board established by Mr. Hastings; that in the space of *two years* he had not attended the Board, or discharged the duties of President for more than six weeks or two months, having been employed by Mr. Hastings in other quarters; but that during the whole time, he had received his salary just as if he had done the duties of his office. He had heard of reports, which were pretty general through the country, that a sum of money had been received by Mr. Hastings from Kolleram and Cullen Singh; and he at last thought it proper to mention those reports to that Gentleman; and, notwithstanding

his intimacy with him, it was with some embarrassment that he actually informed him that rumours of this nature were in circulation.—Mr. Hastings said to him in answer, "Give yourself no trouble about those things; for whatever sums I may have received, I have accounted for them with the Company."

Mr. Anderson being asked if the whole of the landed revenue of Bengal had not been under the controul or jurisdiction of the Board of Revenue, of which he was President, answered in the affirmative. He was then asked, whether if any sum had been received as landed revenue for the use of the Company, it ought not to have passed through the hands of the Commissioners of the Revenue. His answer was in the affirmative.—He was then asked if the Board had ever received any intimation of the receipt of a large sum of money, paid by Kolleram and Cullen Singh, which was not a part of the sum which they were bound by their lease to pay annually? He answered this question in the negative. He endeavoured here to establish a distinction between *public* revenue, which must be known to the Revenue Board, and a *private* revenue, of which the Board might know nothing, and which might be known only to the party paying, and to the Governor and Council.

He was then asked, in consequence of this distinction, whether it was possible for him to fix the public revenue that the farmer was to pay annually, if he was unacquainted with the private revenue, which by a private agreement unknown to the Board, and known only to the Governor and Council, the farmer was to pay. He acknowledged that it was not possible. He was asked whether, if unacquainted with the circumstance of the farmer's being bound to pay a rent *privately*, over and above what he was to pay *publicly*, the Board could demand the real value of the land, without ruining the farmer.

The Lord Chancellor said, it was unnecessary to put this question, for it clearly answered itself.

The Managers in opening the charges had said, that Mr. Hastings did not trust even his most confidential friends with the knowledge of his having received bribes; and that if he trusted some of them, he took care not to let any one of them know *all* that was to

be

be known on that head: he trusted some with one secret relative to his receipt of money, and others with others.

To prove this, the Managers asked Mr. Anderson, if he was in the confidence of Mr. Hastings when he was in India? His answer was, that he had reason to believe he was greatly in his confidence.

After this they asked him, if Mr. Hastings had told him that he had received a sum of money from Nobkissen? He answered in the negative.

He was asked, if Mr. Hastings had told him that he had received a sum of 58,000 rupees from Nundu Loil? Answered in the negative.

Whether he had told him that he had received 100,000^l. from the Vizier Nabob of Oude.—This question was also answered in the negative. The witness admitted that he was at Chunar when this large sum was given, but still Mr. Hastings had not given him any intimation of it, though he was so much in his confidence, and was President of the Revenue Board.

The witness had heard from report of the receipt of these various sums, and that the sum given by Nobkissen amounted to four lacks of rupees (considerably above 40,000^l.)

He said he believed Mr. Hastings had made Mr. Crofts, who was a Member of the Revenue Board, acquainted with the receipt of those several sums, though he had kept them from the knowledge of the witness.

With the examination of Mr. Anderson the business closed for this day. The Lords adjourned at five o'clock.

SIXTY-THIRD DAY.

TUESDAY, May 11.

Mr. D. Anderson was again called, and underwent a long examination, conducted by Mr. Law, one of the Defendant's Counsel.

Having been asked by the Counsel, what was, in his opinion, the general character of Gunga Govind Sing? the witness replied, that he considered him to be a man of good character; but he added, at the same time, that there were many persons who thought differently of the man.

The Counsel having examined him respecting the state of the East India Company's affairs at the time when Mr. Hastings received three lacks of rupees from Kelloram, Mr. Anderson

said that it was understood that a formidable confederacy or general alliance of the native powers, at that time, threatened the safety of the Company's provinces, and in general of the British interest in India: that the Rajah of Berar, a party to this alliance, had actually sent an army to take post in the only road through which the Company's forces could advance to the Northern Circars; that three lacks having been sent to the Rajah, his forces had been drawn off, and the only obstacle to the march of the British forces being thus removed, they had advanced to the place of their destination.

On being examined to the general character of Mr. Hastings in India, and particularly as to the opinion which was generally entertained there of his humanity and disinterestedness, he said he believed he ought venture to say, with great confidence, that except some few individuals who were adherents to party, or had suffered personal disappointment, all the inhabitants of India, as well natives as Europeans, entertained the highest opinion of Mr. Hastings, and considered him as a man eminently humane and disinterested.

On a cross examination by the Managers, Mr. Anderson said he could not, *of his own knowledge*, say that the general alliance or confederacy of which he had just made mention, had ever had any existence in reality; that the forces belonging to the Rajah of Berar had not committed any hostilities against the English, except some trifling depredations committed by a small predatory party, upon whom their Commander promised to exercise the most rigorous justice.

The witness having said that the Berar forces had posted themselves on the only road by which an army could pass on its way to the Northern Circars, the Managers wished to know whether he was so much of a soldier as to be able to know whether this was, in point of fact, the only road by which an army could advance to those Circars: they therefore asked him if he was a *military* man. His answer was, "that he most certainly was not, though he had been two years in the *militia*." This high compliment to the *military* character of the *militia*, raised a loud laugh in every part of the hall. Many of the Peers joined heartily in it, looking at

at the same time at the noble Judges in the Court, many of whom were *exaltis co legibus*, as Lord Stowell would have said. The Court was incumbered with military knowledge by two or three witnesses.

He was like, but was not particularly fond of Mr. Hastings? He said he had always considered himself in the right.

The Managers, advertent to the good conduct which the witness had given to Gunga Govind Sing, asked if he thought this character of that man was a true one—"that though every one spoke ill of him, no one had ventured to dispute his abilities?"

Mr. Anderson said, he did not think this a true character of Gunga Govind Sing, for he did not believe that every one spoke ill of him.

Unfortunately, the words concerning the character on which the Managers asked for the opinion of the witness, were taken from a paper drawn up by Mr. Hastings; it was the object of the Managers to shew that Mr. Hastings and his particular friend Mr. Anderson differed widely in their opinion of Gunga Govind Sing.

The Managers wished then to know whether the witness had ever heard of another sum of money privately received by Mr. Hastings, besides the three lacs which he had already mentioned. His answer was, that he had no recollection of having heard of any other sum so received by Mr. Hastings.

Mr. Burke said he would, for the purpose of refreshing the memory of the witness, read him a passage from an examination which he had undergone before the Committee of Managers.

Mr. Law observed that this examination was not improper; and as the Counsel for the defendant could have no objection to it, it would be proper that the *whole* of it should be read to the witness, as a partial selection from it might entrap him.

Mr. Burke, hearing the word *entrap*, took fire, and said it conveyed an insinuation which was not to be borne. The Commons never had borne, and he trusted never would bear, such language. It was not possible that they could harbour a wish to *entrap* any witness—it was impossible that, prosecuting in the behalf of the nation, they could feel those resentments which were so natural to those who had suf-

fered wrong, and who, smarting under it, appeared in the Judge's private professions. They would not therefore suffer the Counsel to tell them that a witness might be *entraped* by them. When a person in far different circumstances from those of the present defendant—when the Earl of Macclesfield stood at their Lordships' Bar, on an impeachment brought by the Commons, he ventured to drop an expression which seemed to insinuate, that the Managers would *entrap* or *entrap* a witness; upon this all the Managers *severally* rose and declared, that they would not suffer such language from the noble Lord, because it could not, and it should not be supposed, that they had any other object in view than justice to the defendant, as well as to the Public. It was on public grounds only they stood forward to prosecute, and not from any private motive, pique, or resentment; and therefore it should not be insinuated that they were capable of wishing to *entrap* a witness. What the Commons would not bear from so great a man as the Earl of Macclesfield, they certainly would not bear from the Counsel of Mr. Hastings.

Mr. Law explained himself; he said he did not mean to insinuate that the Managers wished to *entrap* the witness; he only meant to say, that to read a part of an examination, without reading the whole, had a tendency to *entrap*.

The witness himself said, that he wished to hear the paper read, with which the Hon. Manager wished to refresh his memory: it was his duty to speak the truth, and the whole truth; and if any thing had escaped his memory, which this paper could bring back to his recollection, he would be very glad to state it to their Lordships.

The Managers did not press the reading of this paper, and Mr. Anderson was informed that he might withdraw.

Peter Moore, Esq. was the next witness called. He had been a Member of the Provincial Committee of Revenue at Calcutta, and afterwards of the Provincial Committee of Revenue at Moonsheeabad; that when he was of the former, he had an opportunity of knowing Gunga Govind Sing, who was Dewan to the Committee: he was a man of a very bad character; detested by the Europeans, and dreaded by the natives. The system of Provincial Committees of Revenue, abolished

abolished by Mr. Hastings, he considered as much more conducive to the due collection of the revenue, and to the prevention of oppression, than that of a general Committee stationed at Calcutta. His reason for entertaining this opinion was, that to collect the revenue, and at the same time guard the people from the oppression of the Farmer-General, required a diligent, attentive, *local* controul. That by the new system introduced by Mr. Hastings, this *local* controul was removed, and the people in the *distant* provinces became a prey to the farmers of the revenue, because they could neither obtain redress on the spot, or go to Calcutta in search of it.

Gunga Govind Sing, he said, had been the very reverse of what a Dewan ought to have been, and his appointment to this office had been attended with a circumstance perfectly new in the history of the Company's revenue; for his own personal security was all that was required of him for the payment of his rents. It was a general instruction to all the provincial Committees of revenue, to require *collateral* security from every person to whom they farmed the revenue of any district; and from this instruction there had never been a departure, at least as far as he had ever heard, whilst those Committees were suffered to exist! He said it was a subject of conversation at every public and private table at Calcutta, that Gunga Govind Sing had given Mr. Hastings *four lacks of rupees* for the farm of the districts which the Governor General had let him.

Mr. Dallas, of Counsel for the Defendant, asked the witness whether he had not been *dismissed* from his seat at the Board of the Provincial Committee of Revenue at Calcutta.

Mr. Moore said, that as this question contained an insinuation levelled at his character and honour, he begged their Lordships would not require him to answer it with a mere *aye* or *no*, but would have the goodness to let him give his answer a little at large.

He said, that the Board at which he had had a seat having had several disagreements with Gunga Govind Sing, complaints were made against the Board; and the Supreme Council had at last resolved to *divest* the Members of the Board of their trust; and they were accordingly divested of it; but that they had been *dismissed* or censured

was not true; and he had not a doubt in his own mind, but that the reason for which the Members had been thus divested was, that Gunga Govind Sing *might be left to the full range of his own uncontrouled will*.

He was asked, who were present in Council when the resolution was taken for divesting the Members of the Revenue Board of their trust? His answer was—Mr. Hastings, Mr. Barwell, Mr. Francis, and Mr. Wheler. But he understood that it had been carried by the double vote of Mr. Hastings, supported by that of Mr. Barwell, in opposition to Mr. Francis and Mr. Wheler.

Being asked how he knew that, he said he had been so informed immediately after by Mr. Francis, who told him that *he* had endeavoured to put the question upon the individual merits or demerits of each Member separately; but that he had been overruled, and *all* the Members were removed—It was obliquely insinuated in a question put by the Council for Mr. Hastings, that as this information related to matters which had passed in Council, and which ought not to have been divulged, Mr. Francis was censurable for having divulged them.

But there was no ground for censure on Mr. Francis on this head, as the Council was at the time sitting as a Committee of Revenue, and as such was an *open* Committee.

Mr. Moore was asked by the Managers, whether, subsequent to what the Counsel would call his dismission from the Provincial Committee at Calcutta, he had not been appointed a Member of the Provincial Committee at Moorshedabad? he said, he had. He was asked, which of the two situations was the more important, that from which he had been removed, or that to which he had been afterwards appointed? He replied that the latter was considerably more important than the former.

He was asked if Mr. Hastings, in any conversation with him, had ever passed any censure upon his conduct whilst he was a Member of the Calcutta Committee? The answer was, that he never had; that so far from it, when he waited upon Mr. Hastings to take leave previous to his departure to enter upon his new office at Moorshedabad, that Gentleman, in a very good-natured way, wished him all possible

able success; and for his own part he had reason to believe that Mr. Hastings intended this new appointment as a compensation for the loss of his seat in the Calcutta Committee of Revenue, which seat he had taken from the witnesses without any cause.

While the witness was giving that part of the answer which is in Italics, the Counsel endeavoured to interrupt him; but Mr. Moore, raising his voice, was heard, notwithstanding the endeavours of the Counsel to prevent it.

Here the Counsel complained to the House; and said, that the witness was much to blame for raising his voice with a view to drown that of a Counsel, while he was urging objections to the question, to which the witness, regardless of the objections, had given an answer.

The Managers defended the witness.

They said that the Counsel having attempted to impeach the credit of the witness, by endeavouring to prove, out of his own mouth, that he had been dismissed from his situation, and consequently that he had done something that was bad and called for dismissal, it was just that the witness should endeavour to defend himself; and, by setting the matter in its true light, vindicate his own character. It was as natural for INNOCENCE to raise its voice and express the indignation it felt when an attempt was made to fasten guilt upon it, as it was for conscious guilt to be silent and hang down its head confounded and abashed.

Much sparring took place between the Counsel and the Managers; but, finding it was half past five o'clock, they agreed not to proceed any farther this day; and then the Court adjourned *.

* After the Commons had returned to their house, from the business of this day, the following important motions and debates took place, in consequence of a previous intimation on a former day from Mr. Burke:

Mr. Burke presented his promised motion respecting the Trial of Mr. Hastings with a speech of extreme length; in the early part of which he said, that he had been employed for the last ten years of his life in diligently enquiring into the affairs of India, the House having, in its wisdom taken, and wish it was in them to take, the proper means to know whether any disorders existed, and whether any offences had been committed. After much investigation, the House had thought proper to take two means of remedying them in future: the one by applying regulations for the prevention of further grievances; the other, by instituting prosecutions for offences by a penal law. How far these means had proved successful was not yet ascertained, though he should hope they had succeeded in the first instance, and he trusted they would in the other, when by their perseverance and patience they should obtain judgment against the great delinquent under prosecution before the House of Lords. That the prosecution was a proper one, the House had resolved. Whether they were to take the proper means of rendering it effectual, or whether the opinion formed by them was to be ratified in another Court of Justice, was not a question to be decided there. It was, Mr. Burke said, in vain to talk of the necessity of bringing a delinquent to public justice without the proper means were given to do it with effect. We were going to war with one of the greatest Monarchs in Europe. Were they not then to conduct the war of the virtue of the Country against its vices, to punish the pirates and delinquents, and were they not to be engaged in a war with an individual who was one of the greatest of those delinquents, if he was a delinquent at all? Mr. Burke, after an exordium to this effect, said, he had the testimony of one of the best and least questionable witnesses, to prove the fact of gross mismanagement in our former Government in India, he meant Lord Cornwallis. He then referred to Lord Cornwallis's letter, dated March 12, 1789, which was referred to by Mr. Francis in the debate of March 31, and read those passages in which his Lordship states his opinion of the prospect of prosperity that he expected to arise in consequence of the principal Landholders and Traders being restored to the power of supporting their families with decency. Lord Cornwallis, Mr. Burke said, drew this picture; and he would ask, if any man supposed that Lord Cornwallis was charging the defects of his own Government; his Lordship by the word *restored* must have alluded to the former Government, viz. that of Warren Hastings, &c. Mr. Burke said, they had that forenoon been in the Hall for the sixty third day, and reckoning three hours each day, they had spent one hundred and eighty-nine hours there, which was nine hours longer than a Commerce was allowed to sit in that House. After commenting at some length upon the time consumed by the Trial, he said, in that time the House might well exclaim, that substantial justice ought to have been obtained. That were, it was to be remembered, three parties in the case; the first was Mr. Hastings, the next the Public, and the last the Managers themselves. The first was sustained

SIXTY-FOURTH DAY.

TUESDAY, May 18.

VINDICATION OF PETER MOORE, Esq.

Mr. Ankrutther opened the business this day, by observing, that an attempt

having been made by the Counsel for Mr. Hastings, at the last sitting of the Court, to discredit the evidence of Mr. Moore, by an insinuation that the witness had been *dismissed* from the Provincial Council, of which he had been a

sustained by each in consequence of the Trial, were to be considered and relieved; but first of all, those of Mr. Hastings; and let them see what had been the conduct of that Gentleman. On the 9th of February 1789 Mr. Hastings presented a Petition to the House of Lords; and Mr. Burke said, he would admit that there might be circumstances of complaint in a criminal on the very object of his trial. Mr. Hastings, in his Petition, had first complained that his Trial had lasted a year, which with regard to the period from its commencement was true, but not true in the light of a trial going on *de die in diem* for a twelvemonth; Mr. Hastings had next complained, that seven Noble Lords, his Judges, had left this world in the course of nature. That was a circumstance the Managers could not help, nor had he ever before heard that it was among the privileges of Peers of England to escape paying the debt of nature. But neither the Managers nor that House had the power of preventing their death, much as they must regret that the Noble Lords should die, unless indeed such Peers as had sons to succeed to their honours and their virtues. Mr. Burke here exercised some little pleasantry, and said, to all who heard him he wished a long life and a short trial. Mr. Hastings next, he observed, talked of his witnesses having gone to India. If he had let them go there, it was his own fault; the Managers could not help it; and all he could say was, that the Trial must take its course, and Nature must take her's likewise. His own health, Mr. Hastings had next said, which a long residence in India had injured, required the benefit of foreign air, which the Trial deprived him of the opportunity of taking. The fact Mr. Burke denied; nothing could hinder him from enjoying foreign air, if he would settle with his bail for that purpose. Again, Mr. Hastings complained that he was taken out of his rank of life, and deprived of the enjoyments other men might command. Mr. Burke said, he could not believe it. They saw him at balls, operas, plays, and assemblies [A cry of *Ob*!]. Mr. Burke said, he would re-assure the fact in spite of that *Ob*, which he was persuaded was not the *Ob* of subtilty, nor did it proceed from benevolence of mind. Besides, when Mr. Hastings declared that he suffered hardships, was it not contempt to the Managers for the Commons of England to prove the contrary, and that he enjoyed all the comforts of life, and shared in its rational pleasures? Long might he enjoy them! He did not regret his enjoying them; he had only said, Mr. Hastings did enjoy them. And Mr. Burke believed, if the ease of the life of Mr. Hastings were compared with the labour of his (Mr. B.'s), it would be seen which of the two was best entitled to complain. He wished, therefore, that Gentlemen who complained of the hardships Mr. Hastings endured, would justify what they said on the subject, on their legs, that he might have an opportunity of answering them. A man upon his trial, undoubtedly, could not be quite at his ease; it was impossible from the nature of the case, and to that Mr. Hastings himself must admit; but he complained of the mode of trial being so expensive, and his fortune so small. With regard to his being thrust out of his place in common society, he must admit that he was as much in his place in common society as any man among them. Mr. Burke here returned to Mr. Hastings's Petition, a copy of which he held in his hand, and said, if it were true that they deprived Mr. Hastings of the means of his existence by the conduct of the Trial, he should say they were violating justice; but let them see how the fact stood? It had been stated, that Mr. Hastings's fortune was under 50,000*l.* and that 3,000*l.* was spent in the first Session in getting the records copied, and that 20,000*l.* more was probably spent in the next Session. If so, Mr. Hastings could not have bread. The context seemed to say, that the materials cost him 50,000*l.* what then must the superfluities cost him? Mr. Hastings, Mr. Burke said, had told a Noble Lord, who was seated at it, that he must judge of his expences by the single fact, that copying papers at the India House alone had cost him three thousand pounds. Mr. Burke declared that he had been at the India House, and desired the proper person to tell him what it had cost Mr. Hastings at the India House? when he was told, *not one farthing*, for every thing was copied for nothing, he assured him; though he could not say but that some little civility might have been given the clerks. Mr. Burke reasoned on this, and said, he would fairly declare, that Mr. Hastings got neither credit nor compassion by stating what was not true. The Managers were ready to enter into every particular asserted by Mr. Hastings in his Petition, and would undertake to disprove the allegations. He must, therefore, say, it was a serious thing to charge that to justice, and im-

Member; the Managers intended this situation was. For this purpose Mr. day to shew how groundless such an in- Anstruther desired that the minutes of

pute it as taking away the means of defence, which was not so; and he would ask, Did what he had said prove Mr. Hastings to be worth more than he had asserted? He feared they could prove that he was worth a great deal more. But whether what he had alledged was true or false, Mr. Hastings was entitled to that justice which was due to him, and should not be kept one moment longer in suspense than was unavoidably necessary. He should have thought that Mr. Hastings, who stated all the grievances and hardships alledged in his Petition, would have been glad if they had given him the opportunity to clear away any imputation, and to have refuted any one charge; but that he rejected, and therefore the assertion, that he had used every rational mode of shortening the proceeding, was not true. Whatever was the hardship Mr. Hastings suffered, Mr. Burke contended, was his own, and not the hardship imposed on him by the Managers. There were, he observed, three ways of a man getting off from a trial; one, by an honourable acquittal; second, by an acquittal; and thirdly, by an escape effected by delay and procrastination. The next Session, Mr. Hastings had found the business exceedingly long, and he came with another complaint, declaring, that he would have pleaded Guilty, rather than have undergone what he had sustained. Mr. Burke commented on this at some length, and contended it was evidently the aim of Mr. Hastings to attempt to escape by delay and procrastination, and thus, in the end, baffle the House of Lords. The Managers of the prosecution, Mr. Burke said, however they might fail in knowledge of the law, or however they might fail in dexterity, no man, he believed, would say that they failed in zeal or in exertion. They had all through been actuated only by a desire of obtaining public justice, and they wished to put some speedy end to the prosecution, which had already lasted longer than the longest Election Committee. By the conduct of the Defendant, it was imagined he wished to gain time. This was evident, from every paper that was read being insisted on being read at full length, and by other symptoms; so that Mr. Hastings appeared like a fox, who, when hunted and pursued, endeavours to elude his hounds, and try which has the longest wind. Mr. Hastings seemed to think that the House, tired and sickened of the business, would abandon it altogether; he would submit to the House, however, whether it would become their dignity to act in that manner, and whether they ought not to shew that they had the power to carry on a prosecution so effectually, after they had once thought it a debt due to justice that it should be instituted, he submitted it also to the consideration of the House, whether the best means to prevent the chicane so obviously practised, would not be to let the party know he had no hopes for an escape, and that the House would not be satisfied till justice was obtained. To effect this, the House had to do two things: first, to put the prosecution within a manageable compass; and next, by a resolution to declare that they would not be baffled. Mr. Burke mentioned that Lord Somers, Lord Halifax, and some of our best men, had been impeached; and he stated what the nature of the proceedings had been. He mentioned also the authority given to the Managers of the Impeachment of Lord Macclesfield, and said, upon that he had chiefly grounded one of his motions. After an apology for having detained the House longer than he really intended, Mr. Burke read his two Motions as follows, and then moved the first—

“That this House, taking into consideration the interruptions occasioned by the occupations of the Judges and the House of Lords, as also other impediments which have occurred or may occur in the course of the Trial of the Impeachment of Warren Hastings, Esq. doth, without meaning to abandon the truth or importance of the Charges, authorize the Managers of the said Impeachment to insist only upon such and so many of the said Charges as shall appear to them the most conducive to the obtaining speedy and effectual justice against the said Warren Hastings.”

2d. “That the Commons of Great-Britain in Parliament assembled, from a regard to their own honour, and from the duty which they owe to all the Commons of Great-Britain, in whose name, as well as in their own, they act in the public prosecutions by them carried on before the House of Lord, are bound to persevere in their Impeachment against Warren Hastings, Esq. late Governor-General of Bengal, until judgment may be obtained upon the most important articles in the same.”

The Chancellor of the Exchequer said, he did not mean to go into any discussion, but he thought the tendency of the Motion to evidently leading to the furtherance of public justice and the advantage of the party accused, that he should conceive there could be no difference of opinion on the subject. When the prosecution had been instituted, nobody imagined it would have gone into the length to which the Trial had been drawn; and every body must

a Consultation of the Supreme Council it would appear, that Mr. Moore his of Bengal should be read, from which after his supposed dismission, been read, unless some step or other were taken, the length of the Trial must still be indefinite and possibly the ends of public justice might be defeated. The Chancellor of the Exchequer spoke of the situation in which the House stood, and that it was due to their own fault that means should be taken to give a proceeding of so much importance efficacy and effect. He thought the first Motion, therefore, perfectly unobjectionable; and although the second did not appear to him so absolutely necessary, if the Right Hon. Manager thought it material that such a declaration should be made, he saw no sufficient ground to object to it.

The Master of the Rolls professed he went along with the Right Hon. Gentleman in every argument that had been urged; but he thought it would be more advisable to make the Motion general, and to follow that precisely which had been adopted in the case of Lord Maclesfield. Sir Richard read a copy of that Motion, and though he confessed it was not so ably worded as the Right Hon. Gentleman's, yet he conceived it preferable, as there was no occasion to assign a reason, the doing of which would be liable to comment. Sir Richard concluded with declaring, that it would have satisfied his mind more, if the Motion had been general.

Mr. Sheridan did not see the force of the Right Hon. Gentleman's objection. The difference of the circumstances of the two Impeachments made the distinction between the two Motions sufficiently clear. In the Impeachment of Lord Maclesfield the Managers were armed with the authority in question in the first instance; it was therefore unnecessary to assign a reason. The Learned Gentleman should observe, that in the present Impeachment they had now passed almost three years without obtaining their object. On which special account, it was necessary to assign a reason for giving fresh authorities to the Managers. Nor did his Right Hon. Friend's Motion appear to him in any part of it objectionable; it conveyed no insinuation; for surely the stating that the Judges were obliged in discharge of their official duty to leave Town to attend the Circuits on the Assizes, was no insinuation against them.

Mr. Wigley complimented the Managers highly on their abilities and their zeal, declaring he had often admired the unabated ardour with which they had returned to the Charge, after a question had been decided against them; he must, however, object to the words "other impediments," because it tended to impute delay to Mr. Hastings, which he did not think had been the fact. Mr. Wigley at some length explained the grounds of his opinion.

Mr. Fox said, the Hon. Gentleman seemed to think the delay imputable to the mistaken zeal of the Managers. That was not, Mr. Fox said, the day to discuss the conduct of the Managers; but when that day should arrive, he should be happy to enter into a justification of their conduct, and to contend with that Learned Gentleman, or any one, or all of the Learned Gentlemen of that House, that in no one instance had the Managers put a question which they thought beforehand would be objected to. He would not enter into a word of discussion then, but he would say there, what he had said more than once in another place, that the delay had been owing to the want of publicity in pronouncing the grounds and principles of the decisions of the House of Lords. That want of publicity was to be lamented, because, not knowing the grounds and extent of the principles on which the decisions went, it was impossible for the Managers to know how far the next questions they put might or might not militate against those principles.

Mr. Wigley, in explanation, said he by no means intended to impute blame to the Managers.

Major Scott [*from the Gallery*] said, "I rise, Mr. Speaker, not to offer my sentiments on the Motion before you, but to take notice of something that has fallen from the Right Hon. Gentleman who made it, and I do assure you that I came into this House with a firm determination to take no part whatever in the business of this day, and therefore I fixed myself in the gallery, that I might not be tempted to change my purpose; but the Right Hon. Gentleman (Mr. Burke) has rendered it absolutely impossible for me to remain silent, by his very extraordinary misrepresentation of two very remarkable circumstances. The first is, his assertion that Mr. Hastings told the Noble Lord, who presented his Petition to the House of Lords, that he had paid three thousand pounds for copying papers at the India House, that the Gentleman had enquired at the India House and found the story was false, as Mr. Hastings got all his papers for nothing. Sir, I affirm in the first place, that Mr. Hastings never saw the Noble Lord alluded to for many months before, nor for many months after that Petition was presented; that Mr. Hastings never had any conversation with that Noble Lord directly or indirectly on the subject of his Petition or of his expences; and I am sure the Right Hon. Gentleman never was told a word about the matter by that Noble Lord. I believe the Manager heard the circumstance he mentioned *from another Lord*; but, whether it was from a Lord or a Commoner, I will state the fact, and am perfectly ready to be accountable to any person for

pointed to a situation much more lucrative, much more honourable, and much more important, than that from which he had been removed; and that the re-

every word of it. When Mr. Hastings determined last year to petition the House of Lords, he requested me to carry the Petition to a Noble Lord, who afterwards presented it. On his reading the Petition, he expressed his surprize and concern at the magnitude of the sum that had been expended. I entered into conversation upon it with his Lordship, and told him, that his surprize would cease, when he considered that the Twenty Articles embraced almost every act of a large public life; that the Managers had never given the least intimation of what Charges they would sustain, or what they meant to abandon; that therefore Mr. Hastings was obliged to be prepared with long briefs and arrangement of evidence upon each, and I was sure it would have cost him three thousand pounds had he paid for the papers from the India-House, or that it would cost him so much to copy them. And, Mr. Speaker, this was a calculation made by me—not from any information that I received from his Solicitor, but upon what I conceived to be very good grounds, for I got a copy of the Managers speeches in the first Session for a friend of mine, which has since, I believe, been sent to India. With these speeches there was a very small part of the proceedings, but I paid forty pounds for them, at the rate of a shilling a sheet, or page; therefore, Sir, upon this calculation, I am morally certain, that it would exceed, and not fall short of that sum; for I think I speak correctly, when I say that the papers upon the Revenue Article alone, where Mr. Hastings is brought in a Court of Justice to defend systems adopted by the King's Ministers, and approved by this House, fill eight large folio volumes. This, Mr. Speaker, is the fact; and I will take upon me to say, that the Noble Lord who presented Mr. Hastings's Petition, never told the Rt. Hon. Gentleman, nor any man living, that he conceived directly or indirectly with Mr. Hastings upon the subject; and I am not a little surprized that the Hon. Manager should at this time of day detail such a story to this House, for I contradicted it in the fullest manner with my name to it, above a year ago; and if there is any man, Lord or Commoner, who will call my argument in question, let him do it, and I will answer him; it has never yet been contradicted; but as for Mr. Hastings, he has nothing at all to do with it. The next point, Mr. Speaker, to which the Gentleman alluded, is, what once fell from me in this House relative to Mr. Hastings's fortune. That also I am ready to state as it happened, and to meet the whole world upon the truth of it. After three or four Charges had been voted in the House, the Right Hon. Gentleman took notice one day, that a considerable quantity of stock had been sold out that morning, and followed this information with some intimation, that it would be necessary to take measures respecting Mr. Hastings. The impression which naturally rose in Gentlemen's minds was, that Mr. Hastings had sold his stock. I stated then, that he had not more than fourteen or fifteen hundred pounds in the Stocks, and that his fortune, which was not more than fifty thousand pounds, was upon certain mortgages. I abide by the truth of my statement; for a very short time after Mr. Hastings arrived in England, I gave to one of the first characters in this country a detailed account of Mr. Hastings's fortune, and where every shilling of it was, amounting then, I think, to about sixty-five thousand pounds, and it was signed by his Attornies. There was also a note to it, that there was some property in Russia, not above three thousand pounds, and considerable sums due to him in Bengal, that had been lent at different times to some English gentlemen. I stated very fairly, that some of these sums might be recovered, but the probability was certainly against any considerable sums being received. It has happened, that more has been recovered than I calculated upon, but not so as to make a difference to any considerable amount. The Hon. Gentleman doubts whether Mr. Hastings has lost any material evidence by death; but he knows that Lieutenant Colonel Eaton died during the recess before the last, and he was a very material witness; but I hope the Hon. Gentleman will not go from his word, but consent to examine other evidences now, who are in peculiar situations. One of these gentlemen, Colonel Polier, came over last year, and this year, from Switzerland. It would be of infinite consequence, indeed, to the cause of truth to examine him; for I am convinced that the present Impeachment would never have been voted, if that Gentleman had been in England, and examined at this Bar. As to the Motion in your hands, Mr. Speaker, it appears to me to be perfectly nugatory and harmless, that I shall not oppose it; for it is of no consequence as to what we now vote about this Trial. The Court does not meet again till next Tuesday the 13th of May. The House, upon any speculation, cannot continue to sit long enough for much further progress to be made; and I am sure that after the prorogation we never shall meet again in the present Parliament, so as to go into Westminster-Hall, if we should live to assemble at all again. Under these circumstances, any vote we may now come to must be of very little consequence.

appointment was made in a manner highly creditable to Mr. Moore. The minutes of the Consultation were accordingly read ; and it appeared that

The Solicitor-General said, he would not detain the House long, but he could not but object to that Motion, as it conveyed an insinuation against the party on his trial, which he, as an individual Member of that House, did not think sufficiently grounded by any thing he had heard ; and that being the case, the Gentleman under prosecution did not in his opinion merit such a Resolution.

The House divided, *Ayes 48, Noes 31.*

On the resumption of the House, Mr. Burke said, a division not having been expected, many Gentlemen had left the House, and therefore the Hon. and Learned Gentleman's taking the sense of the House, had all the effect of a surprise.

The Solicitor General denied that he had acted from any such motive. He saw ground of objection, he said, to the first motion, but not sufficiently strong to warrant his taking the sense of the House. To the latter he could not at any rate agree, because the motion proceeded

The Speaker called Sir John Scott to order, and said, he had thought it right to suffer him to clear himself from the imputation of having acted upon improper motives ; but the House must see the impropriety of his permitting any Hon. Gentleman to discuss motions again, which the House had already decided upon.

The Solicitor-General bowed to the correction of the Chair, and hoped it would not be out of order for him to declare, that knowing it to be the imputation made on many Gentlemen near him, that the second Motion was objectionable on the ground he had stated, he had fallen in with their sentiments, and assigned his reasons for opposing it. He declared, he should think he deserved to be considered in a worse light than he could find words to describe, if he was capable of acting upon the unworthy motive ascribed to him by the Right Hon. Gentleman.

Mr. Secretary Grenville rose to put an end to a discussion which, he was sure, the House did not wish should continue, by moving, that the other Orders of the Day might be read ; but he said, he would take that opportunity of observing, that he had no doubt but that the House in general, and the Right Hon. Gentleman himself, acquitted his Hon. and Learned Friend of having acted on any undue motive ; he must, in justice to the Right Hon. Gentleman, however, declare, that to his knowledge many Gentlemen had left the House, not expecting a division.

The Orders of the Day were then disposed of, and the House adjourned, it being near nine o'clock.

In consequence of the above Motions made by Mr. Burke, the following LETTER appeared in *WOODFALL'S Diary* of May 20 :

TO THE PRINTER OF THE DIARY.

"SIR, If a man in the rank of one of his Majesty's Privy Counsellors does not conceive it below his dignity to revive a calumny long ago refuted, it is not unbecoming in me again to take notice of it.

"The story that appears in your paper of Wednesday, as told by Mr. Burke in the House of Commons, was circulated last year, and a Noble Earl and a Learned Judge (who is a Peer of the realm) were said to have mentioned it. Mr. Burke, who made the first enquiry on the subject in Leadenhall-street, informed Mr. Hudson, that Major Scott had told the respectable Nobleman who presented Mr. Hastings's Petition, that he had paid three thousand pounds for copying papers at the India House. Mr. Hudson, from whom I received this information, told Mr. Burke, at my express desire, that I had never made such an assertion to any person.

"The story, as told by the Learned Judge, if I was rightly informed, was materially different, namely, that Mr. Hastings was the person who gave the information to the Nobleman who presented his petition. It was now become a more serious affair ; and, effectually to counteract the mischief which such a story, coming from such a quarter, might do, I published the real state of the fact on the 3d of July last, and hearing nothing from either of the parties who had circulated the tale (a tale so much in the style of Mr. Sheridan's story in his *School for Scandal*), I concluded that my explanation cleared up the matter, and that they were not a little chagrined, upon considering the injury they might have done a persecuted man, by repeating a table conversation, in which the mistake of a single word makes the whole difference between the truth and falsehood of the story.

"Mr. Burke, after almost a year's silence, has thought proper to repeat this calumny, and has reduced me to the necessity of again refuting it. Indeed it was one of the most cogent arguments

the Council being about to fill up some Sir John, then Mr. Macpherson, moved, vacancies at different revenue boards, that the list of such of the Company's

arguments that he adduced, in order to persuade the Commons of Great Britain in Parliament assembled, to persevere in a prosecution which has already been dragged on to a length that excites the regret of every honest man in England, and the astonishment of every enlightened statesman in Europe.

"I am ready at all times to do justice to Mr. Burke, and I sometimes follow his example, by laying before the public my sentiments on points in which the public has a material interest. Upon this principle I shall examine the truth of an assertion which, as appears by your paper, fell from him on Tuesday last:—"That the delays which had hitherto occurred on the Trial were imputable to Mr. Hastings." Mr. Burke might have said in the words of Richard,

"I do the wrong, and first begin to brawl.

"The secret mischiefs that I set abroad,

"I lay unto the grievous charge of others."

"That it was Mr. Burke's *original intention* that the trial should not come to a close in the present Parliament, I conscientiously believe; and therefore I looked upon the motion introduced in your paper as nugatory. I will state the grounds upon which that opinion has been formed.

"In the *first year* of this extraordinary trial, the Lords sat thirty-five days; they generally met at twelve, sometimes earlier, and sat often till after five; therefore Mr. Burke's calculation of three hours a day, is entirely erroneous. There was not a single dispute in that year about evidence to create delay. Is there a man of common sense will tell me, that thirty five days were not sufficient for the trial, had Mr. Burke *really* wished to bring it to a close? What impediments did Mr. Hastings's Counsel throw in his way? Thirteen days were wasted in speeches; four by Mr. Burke, four by Mr. Sheridan; by Mr. Fox, Mr. Anstruther, Mr. Adam, Mr. Pelham, and Mr. Grey, one day each: I say wasted, without meaning to detract from the merit of those Gentlemen, for neither the Lords who are to decide, the Commons who are the prosecutors, nor the men, women, and children who heard the speeches, can possibly recollect a word of them, except Mr. Burke's story of Deby Sing, and Mr. Sheridan's exquisite eulogium upon filial love and parental affection.

"This was undoubtedly the year of Mr. Burke's triumph; for as he *knew* Mr. Hastings could not *then* be heard, eloquence and harsh epithets could be applied with perfect safety, but the *second year* was commenced under considerable disadvantages. The malicious story of Deby Sing had been fully refuted. Many Gentlemen had arrived from Bengal since the commencement of the trial, who were perfectly disinterested as to the event of it. These Gentlemen concurred in their report of the astonishment and regret with which the account of the prosecution of Mr. Hastings had been received in India; and no man possessed of three grains of common sense can believe that the testimonials subscribed by all ranks of people in India could have been transmitted through Lord Cornwallis, if his Lordship had not been thoroughly convinced that they contained the real sentiments of the people. All rational men execrated the trial, and certain well-known occurrences in England had considerably added to the unpopularity of the leading managers of it. Mr. Burke began this *second year*, by a *second speech* of four days. The remainder of the year was chiefly consumed in alterations upon the competency of evidence; of twelve questions submitted to the decision of their Lordships, ten were determined against the Managers, and two in their favour.

"It will hardly be credited, that this whole year was consumed in an enquiry into the merit of transactions that happened in Bengal in the year 1772, which were fully known in England in 1776, upon which Mr. Burke has not once said that he can produce a tittle of new evidence. But the novelty of the proceeding will strike Gentlemen more strongly, when they know, that upon the ground which Mr. Burke took last year in Westminster Hall, Lord North exerted his whole influence in 1776 to remove Mr. Hastings from the Government of Bengal, and that the Marquis of Rockingham, with all his friends, voted *then* for his continuance, and beat the Minister, though at that time in the plenitude of his power.

"In the winter of 1778, Lord North himself proposed to the Legislature, that Mr. Hastings should be re-appointed Governor General of Bengal. He did the same the next year, and the year following, and it is something singular, that Mr. Fox and Mr. Burke, who could not discover common sense in any other measure than his Lordship proposed during the late war, concurred with him in the propriety of this.

Lord

servants as were then out of employment, should be read, and that from this list should be selected persons of known abilities and integrity, on whom

" Lord North, in reply to a question that I once took the liberty to put to him, acknowledged that he had wished to remove Mr. Hastings in 1776, that he had since that period proposed his re-appointment three several times when his term of service expired by law; that he did so, because it was in a season of war, and of great difficulty and danger, and because Mr. Hastings possessed firmness, vigour, and abilities, and the confidence of the East India Company.

" How far it was just or honourable in the representatives of a great nation to keep a man in a high office, by various re-appointments, and then to prosecute him upon accusations well known some years prior to the first of those re-appointments, I will not venture to determine; but I am confident there will be but one opinion upon the subject, when it shall be considered, without prejudice, passion, or party.

" Thus ended the second year of the Trial.—To impute the obstructions that occurred in the course of it to Mr. Hastings, is to add insult to injury.

" The third year of the Trial began on the 16th of February. Much of the time, as in the last year, has been consumed in disputes upon evidence.—Four questions have been referred to the Judges, and all of them determined against the Managers. This great National Trial stands thus: For the first year there was not a single dispute upon evidence; the Court met early, sat late, had thirty-five sitting days, thirteen of which were consumed on speeches.

" The two next years have been chiefly spent in disputes upon evidence, Mr. Burke's second speech of four days, and Mr. Anstruther's of one, excepted. Sixteen times have the Lords adjourned to the Chamber of Parliament to determine upon the admissibility of evidence. Fourteen of the decisions were against the Managers, and two in their favour. The Lords acted constantly with the advice and assistance of the Judges of the land.

" After this plain recital of facts, I would ask any candid and impartial man, if I am not well grounded in believing that Mr. Burke had pre-determined not to close the prosecution before the dissolution of Parliament. As to the two motions which appear in your paper, I shall not presume to comment on them. When Mr. Burke gave his first notice in the House, if your paper is correct, he mentioned something of the new and dangerous doctrines delivered in Westminster Hall. Possibly he afterwards thought it a point of too much delicacy to attack all the law of the land, and therefore changed his battery, thinking perhaps that Mr. Hastings, who had already borne so much abuse, could sustain a little more.

" Upon one other part of Mr. Burke's speech, I shall say a word or two, because in the present state of the funds it was calculated to sink them still lower.

" He read a *partial extract* from a letter of Lord Cornwallis, in which mention is made of the poverty and wretchedness to which the natives of Bengal are reduced, by the *disasters* of our former system. The conclusion drawn by Mr. Burke from this passage was, that Mr. Hastings had grossly mismanaged the country. The *disasters* to which Lord Cornwallis alluded (that of not letting the lands in perpetuity), Mr. Hastings never had the authority to remedy, nor was it given to the Bengal Government until the year 1786; but Mr. Burke's argument is totally destroyed by the contents of another letter from Lord Cornwallis, received by the same ship. His Lordship in that letter assures the Directors, that they may depend upon the continuance of an annual surplus of more than two hundred lacs—a surplus far beyond what I calculated upon, when I was accused of being too sanguine in my expectations—a surplus that totally overturns every argument used by Mr. Fox in support of his Bill.

" But as this is a point on which the public credit of the country is concerned, I shall state it from the Journals of the House of Commons.

" The year preceding Mr. Hastings's accession to the Government of Bengal, the total receipts of that Government were only three hundred and thirteen lacs of rupees.

" The annual receipts of that Government, in the average of three years from 1781-2, to 1783-4, were five hundred and two lacs of rupees. From 1782-3, to 1785-6, five hundred and twenty one lacs. From 1785-6 to 1787-3, five hundred and eight lacs. From 1786-7, to 1788-9, five hundred and thirty lacs.

" Let any Gentleman who has the least knowledge of business determine, whether a country producing to equal a revenue for so many years in danger of being ruined. The fact is, that in the same period that the British nation nearly doubled its debt, and lost its Western Empire; Mr. Hastings increased the revenues of Bengal two millions sterling a year, and extended the British Empire in India; and while the integrity of the present Minister has been exhausted in an attempt to raise the revenues of Great Britain a million beyond its expenditure

the Company could rely for the due discharge of the trust; to be reposed in them, and whose character would be a security that the natives might be sure to find in

diture, without the imposition of additional burthens. Lord Cornwallis assures his *Constituents* that *this* may be depended upon, an annual surplus of more than two millions sterling from Bengal.

"These circumstances strike me with no little astonishment, and often occur to my mind when I cast my eyes upon some of Mr. Hastings's old friends in the Manager's Box, or when I hear it gravely affirmed, in direct opposition to the evidence of figures, to truth, and to common sense, that his measures have been attended "with great loss and damage to the East India Company," and that they were carried on, "to the vexation, oppression, and destruction of the natives of Bengal."

"I am, Sir, your humble servant,

"JOHN SCOTT."

Bromley, May 16, 1790.

The result of this Letter was, that on the following day, FRIDAY, May 21,

General Burgoyne rose in his place in the House of Commons, and began a speech of some length, with flattery, that he was about to undertake a task extremely disagreeable to his feelings; he said, he was sufficiently aware his weight with that House and his talents were by no means equal to those of many Gentlemen near him. He stood forward, on this occasion, however, because he thought, when men, to whom the House had delegated one of the most important trusts that it could possibly vest in any of its Members, were aspersed, while they were conscious that they discharged their duty with integrity, they were entitled to the protection and support of that House, and he had no doubt but that day would evince that there was but one opinion on the subject. If the persons to whom he alluded forborne coming forward themselves on the occasion at this time from motives of delicacy, it was the more necessary that some other person should; and he had the rather undertaken the task, because, having never fallen under the Hon. Gentleman's pen, he could not be supposed to be adjusted, in the step he was about to take, by any motives of private pique or personal resentment. He could feel concern for the offender, and he trusted that the Hon. Gentleman himself, or any of his best friends, would find him an open, a firm, but he trusted a liberal and temperate accuser. When he observed, that the principal person selected as the object of the Hon. Gentleman's attack, was a Gentleman entitled, above all other men, to universal respect and admiration; when he considered, that that *Man of Malice* as his bellower had termed him, united wisdom and experience with every elegance of mind, every humane feeling, and every amiable faculty that adorned mankind; that that *Man of Malice* led a life of private virtue and public industry and unremitting attention to the best interests of society; that when all considerations of a party nature should be no more, and the libels and the Libellers should be in the dust, that he would then be looked upon by posterity as the honour of his time; it was impossible not to feel the indignation due to the raucour of those who selected such a character, as the object of their calumny and the mark of their derision. With all these feelings, General Burgoyne said, the case might be regarded to be taken up by him as the cause of the Gentlemen appointed by the House to conduct the prosecution against Mr. Hastings; but he begged to state himself as standing on very different and much broader ground. He stood up in defence of the honour of that House, and of the dignity of the Representatives of Great-Britain, shot at through the medium of the Managers of the Trial of Mr. Hastings. Having thus laid down his premises, General Burgoyne proceeded to state that the House had borne too long already the libellous attacks of the Hon. Gentleman who had avowed himself the author of the Letter contained in the paper he held in his hand. From the commencement of the Trial to the present hour, the Hon. Gentleman, confessedly the agent of the criminal brought to the Bar of the House of Lords, had systematically libelled that House, and the proceedings which had originated by its special authority. The Honour of the House and the Privileges of its Members had been insulted and tossed at with impunity. The General declared, that he had made out a schedule of the Hon. Gentleman's libels, to shew that he was grounded in his assertion; that the Hon. Gentleman had uniformly, and with great industry, pursued a system of libellous attack on the Managers. He read an extract from a Letter signed John Scott, addressed to Mr. Fox, and published July 14, 1789, in which the writer asserted, "That thirteen of the Charges against Warren Hastings, Esq. had passed the House of Commons without having been read, to the shame and disgrace of the Nation;" and "that there were papers on the Table of the House of Commons, which fully demonstrated that every thing uttered in Westminster-hall was false and unfounded." The General was proceeding with reading extracts from the Letter, when

Major

their justice and humanity, complete protection from rapacity and oppression. This motion having been carried, the list was accordingly read over, and

Major Scott spoke to order. The Major said, as the Hon. General had only given him notice, that he had intended to proceed on one Paper, and as he had prepared himself to answer that alone, he submitted it to his candour and consideration, whether it was fair to bring what had appeared at any other period into his statement of the complaint; not that he had any wish, the Major said; to disown any one Letter that he had written; he did not care a straw about them.

General Burgoyne resumed his speech, and declared, that he had only produced the schedule, to shew that the publication he now complained of was but one of a long-continued and progressive system of libels, and that the Managers had not been precipitate in complaining. He said, he should be exceedingly hurt, if it could be supposed that, on an occasion like the present, he could intend to produce any collateral matter in aggravation of the immediate cause of complaint; and that, sooner than have it for a moment considered that he was capable of any thing to dilberal and unfair, he would readily abandon any argument that the schedule which he had prepared might suggest, and return to the more immediate subject. The General then observed, that libels on that House had of late been frequent, and that the prints teemed with the most licentious attacks on its proceedings and the conduct of its measures; although it was well known, that printing any part of what passed in that House, or even the speeches of any of the Members, was directly contrary to the order of the House; but, owing either to the indifference or the contempt of the House, the papers had printed accounts of their proceedings from time to time, and had gone on so for years. Even a communication by letter, or the circulation of any account of what passed, was contrary to order; but there was surely a great difference between a private letter from one Gentleman to another, and a libellous attack on the House for its conduct in a judicial proceeding in a great cause pending before the High Court of Parliament, and more especially when the Libel came from the Agent of a criminal on his trial, and that Agent was a Member of the House, who consequently had an opportunity of complaining in his place against the Managers, if he thought their conduct wrong. The General declared, he wondered that the Hon. Gentleman, when he was penning his libels, did not reflect that he was composing attacks on the honour and dignity of Parliament; and did not consider, when he subscribed his name to them, that he was setting the House at defiance, and risking all the consequences of a breach of the Privileges of that House. After laying great stress on this remark, General Burgoyne adverted to the conduct of Mr. Hastings and his Agent during the course of the Trial, imputing to them a variety of endeavours to divert the attention of the Public from the proceeding. At one time, he said, a Gentleman had been brought from Wales to engage the notice of the House; and at another, the Hon. Gentleman came forward himself with a Petition and a complaint. He did not, the General said, accuse the Hon. Gentleman of ignorance of his duty as a Member of Parliament; on the contrary, his knowledge of that duty made his offence the greater. In order to shew what had been the rule of proceeding in cases of a similar nature, the General stated several precedents from the Journals: and the first he mentioned was that of a Baronet in 1701, who had uttered certain words, which were taken down at the time; but the Baronet was suffered to explain himself, when he begged pardon of the House if any thing he had said had given offence. The General mentioned several other precedents; but, as we did not hear them distinctly, we cannot give them in detail. After a variety of pertinent observations, General Burgoyne concluded with reading the several Motions he intended to move, which, for the sake of intelligibility, we have subjoined in the form in which the whole proceeding is entered on the Journals. Before the General sat down, he appealed to the Chair for information what would be the proper time for the Hon. Gentleman to make his defence?

The Diary of Tuesday last having been handed to the Clerk, at the desire of General Burgoyne, the letter signed *John Scott* was read from it; at parts of which the House laughed exceedingly.

The Speaker, as soon as the Letter had been read, said, it was the practice of the House to hear the party against whom a complaint was made, if he was a Member of the House, as soon as the matter of the complaint had been fully opened, before any Motion had been made; and then it was usual for the Member complained of to withdraw. Thus, Mr. Speaker said, he had reason to believe was the general practice, although he was aware there existed exceptions to it, as it had been the case with Aldermen Crosby and Oliver.

the name of Mr. Moore was selected who perfectly answered the description, from it, as the name of a gentleman no less honourable to Mr. Macpherson,

Major Scott then rose, and said, "Mr. Speaker,—Before I enter upon my defence, I must express my acknowledgments to the Hon. General for the very fair and candid manner in which he has opened the charge which he has thought proper to prefer against me. Before I begin, I do most solemnly disavow the slightest intention that I had to do any thing that could be continued into an invasion of the privileges of the House of Commons.

"The peculiar situation in which I stand at the present moment will, I flatter myself, Mr. Speaker, plead my excuse to the House for detaining them a short time, but I promise, them it shall be as short as possible.

"I must confess to you, Sir, that I did not expect at this time of day such a Motion from such a quarter. I know that this House possesses great and important privileges; I know that the privileges of the House are daily broken in upon; but, as there are some rules "more honoured in the breach than in the observance," I have always supposed, that in a country the freest in the whole world, this House had consented to dispense with the rigid observance of some of its privileges, retaining, however, the full power to resume them; and where liberty shall be pleaded as an excuse for licentiousness, the House will consult their own dignity, their own honour, and their justice, in calling the offender to a severe example. I believe, Sir, it has been observed in almost every trial for a libel in the Courts below, that the surest way to preserve the freedom of the press is to punish the abuse of it. Upon this ground, Mr. Speaker, I wish my conduct to be considered; and upon no other, I am sure, it will be considered by a body of Gentlemen, who, prizing the blessings of a free constitution, will be at all times ready to support, in its fullest extent, the freedom of the press. I know it to be one of the standing orders of this House, that no strangers shall be admitted into the gallery; yet, Sir, our gallery is always, and very properly, full of strangers. I am aware that it is a breach of privilege, for any man to publish the speeches of this House; yet, we know that every day's debate is regularly published, and with great accuracy in general, on the following morning; and we have very good reason to believe, that on important questions in this House some Members write their own speeches; and I will appeal to the recollection of every Gentleman, whether men of the first eminence in the House have not thought it impertinence to correct any misrepresentation that has occasionally been made of their speeches, by an explanation on the following day; but no person ever thinks of excluding strangers from the gallery, or prohibiting the publication of the Members' speeches. The precedent of the year 1701 does not apply in any degree. At that time the manners and customs of all ranks of people were different, and the public knew little of the proceedings in Parliament; but in these enlightened days, they know what their constituents do every day, and they have a right to know it. I hold now in my hand twelve speeches and pamphlets on political subjects, published by a Right Hon. Gentleman over the way (Mr. Burke), which I shall more particularly refer to by and by. The question then to consider is, Whether in my remarks upon a speech of a Right Hon. Gentleman, or rather upon the report of that speech, I have deviated from that line of propriety which, as a Member of Parliament, or as a Gentleman, I am bound to observe? But, though my Letter is really and truly a remark upon a speech in a paper, yet I will neither be mean nor base enough to shelter myself under such a subterfuge. I have read it again and again, but cannot find an offensive word in it. Will the Hon. General point out any thing offensive in the language, or absurd in the argument? I shall be glad to meet him upon that ground. I will, very shortly, Mr. Speaker, examine the facts that I have asserted one by one, and I defy the united abilities of the Gentlemen opposite to me to dispute the veracity of any one of them.—The first, Sir, is the story of the three thousand pounds stated to have been paid by Mr. Hastings, at the India-House, for copying papers. Am I to blame for the circulation of that ridiculous tale? or am I charged for a libel, because I asserted a libel in its course? Men who are prosecuting for acts which involve, as they say, the desolation of Provinces, the banishment of Princes, the robbery of Ladies, &c. one should imagine, would be above attending to such nonsense. Yet, when a Right Hon. Gentleman thought proper to make a serious enquiry into such little-tattle stuff, and to involve my name in it; when men of rank and consequence repeated the story again, I was justified in declaring, what I again repeat, that the story has no foundation in truth, either as it respects Mr. Hastings or myself. If there are any persons who are to be ashamed, they are those who first brought such contemptible nonsense before the Public.—Sir, the next assertion in my Letter is, that an account stated in a Morning Paper, that the delays in the Trial are imputable to Mr. Hastings, are not true; that to say so, is to add insult to injury. Had I stopped here, the House might with justice accuse me of audacity; but I have given

who made it, than that to Mr. Moore, Moore was called by Mr. Anstruther whom it so well suited.—After this Mr. and appeared.

my reasons for adding, that I believe it was the original intention of the Right Hon. Gentleman not to bring the Trial to a close in the present Parliament. If every honest man in the kingdom will lay his hand upon his heart, and deliver his opinion, I am convinced it will exactly coincide with mine. But I have still stronger evidence to offer upon this point. Such Gentlemen as have attended in Westminster-Hall cannot but observe the slow progress of the present Trial. I own I am astonished at the patience and forbearance of both Houses. Sir, we the prosecutors have been proving for several days—I beg pardon, I mean, we have been attempting to prove—that Mr. Hastings, by a system he established in 1781, brought great loss and damage to the revenues of the East India Company, though our Managers proved *three months ago* that the change of system was attended by an actual increase of revenue, amounting to nearly 400,000. in three years. If there is one Gentleman in this House doubts the truth of this, let him borrow the evidence, and look into page 1196.—Sir, upon the next fact the House will determine. I think the justice of the reflection no man will dispute; but I have put it hypothetically; and I now ask the House and the country, whether it was just or honourable to impeach a man for acts that he was said to have done in the year 1772, which were fully known in 1776 in Great Britain, upon which not one tittle of new evidence is or can be brought; when, subsequent to the year 1776, he has three several times been appointed by the Legislature, on the motion of the Minister, Governor-General of Bengal? Surely such a question is a fair one, and if ever pertinently put, put at such a time as this, when we may be on the eve of a war. I have put the question hypothetically; but I am neither afraid nor ashamed to say that I think it was unworthy of a great nation.—The next point, Mr. Speaker, is what I took, as I state, from the newspaper, for I really was not in the House at the time the Right Hon. Gentleman gave notice of the Motion he intended to make; I mean as to the new and dangerous doctrines that he had heard in Westminster-Hall; I abide by the reflection I made upon that circumstance.—The next point is a matter in which the dignity and justice of this House is most materially concerned, and on which its character for consistency throughout the country materially depends. I do affirm, Mr. Speaker, that the House upon this point is involved in a very unfortunate dilemma, owing to the degree of confidence that they have reposed in the Gentleman opposite to me. When I state the facts, the House will judge of the proper measures to be pursued. Of the twenty Articles composing the Impeachment, there is one entitled Revenues, on which to much time has been employed in Westminster-Hall. When that article was under the consideration of a Committee of the whole House, the Minister not only voted, but spoke against it; and he proved, from accurate calculations, that by Mr. Hastings's change of system in 1781, a *considerable* advantage had accrued to the East India Company. He proved also, that no sort of labour was shown by Mr. Hastings to his servant Canto Bakh, who had been a very considerable farmer of revenue before Mr. Hastings arrived in Bengal. It happened, however, that upon the division the Minister was left in a minority, and the question was carried, by a majority of fifteen, for impeaching Mr. Hastings upon this article. This was the only debate in the House upon the subject; for when the article was presented in the form in which it now is, it passed without observation or comment, and, I am sure, without being looked at; because either this article contains an assertion palpably and notoriously false, or certain resolutions moved for four years successively are notoriously false; and for this most intelligible of all reasons, that they are manifestly contradictory, the one to the other, as I shall prove in a few words; and unless it be true that two and two make five as well as four, both are not true. The article of impeachment called 'Revenues,' states, that Mr. Hastings's administration of the Revenues was attended with great loss and damage to the Revenues of the East-India Company, and with the vexation, oppression, and destruction of the natives of Bengal. This Article was voted by the House of Commons in the month of May 1787. How has it happened that a very few days before this vote, the House voted another Resolution directly the reverse of it. That Resolution was moved by a Right Hon. Gentleman (Mr. Dundas), and is in substance as follows: "That the annual receipts of the Bengal Government on an average of three years from 1781-2 to 1783-4 were five hundred and eight lacks of rupees." The Right Hon. Gentleman did not merely content himself with moving this Resolution, but he reasoned upon it at great length; and he affirmed, as is undoubtedly the truth, that Bengal was the best governed country in India. This is the average of the three years of Mr. Hastings's administration that immediately followed the change of system, a change so much condemned by the Managers. I will do the Right Hon. Gentleman (Mr. Dundas) the justice to say, that he also voted against the Revenue Article; but as the House has had an India Budget in

Mr. Hastings, of Counsel for Mr. Hastings, in order to remove a suspicion that he or his colleagues had thrown out insinuations against Mr. Moore

1733, 1739, and 1762, and as it has voted Resolutions each year, which prove that, so far from Mr. Hastings having overstrained the country in order to get a large temporary Revenue, the last year's Revenues are higher than the preceding, I do own I am not a little astonished that the House still permits the Revenue Article to strain its Journals, or allows its Managers to go on day after day attempting to prove what, if it could be proved, must disgrace the House of Commons; namely, that for four years successively it has entered false Resolutions upon the Journals. I contend, that the Resolutions are true, and that the Article is false. Those who differ in opinion with me, those who support the Article, must condemn the Resolution. Was it, Sir, indecent or improper in me to attempt to avert the mischiefs which the public might sustain by a gross perversion of the sense of Lord Cornwallis's Letter? Is there a man in England so stupid, as to believe that a country is depopulated and ruined, which furnished supplies for maintaining seventy thousand men in arms during the late war, which, since the reductions in consequence of the peace, has furnished a surplus of two millions sterling a year, and from which Lord Cornwallis himself tells us, we may depend upon the continuance of such a surplus in future? I think, Sir, by explaining this matter, I might claim some merit with this House, and with the Public. It is the duty of every Member of Parliament to support the Government of the country as far as he can; and I am not afraid to avow, that I have often written upon the Revenues and resources of the country, and I shall ever be ready to avow them. As to my statement of the Revenues, so different from that of the Gentlemen opposite to me, I will pledge my salvation upon the truth of my account, unless they will prove that Lord Cornwallis has transmitted false accounts from Bengal. Look to the Reports upon your Table, and you will see, that when Mr. Hastings came to the Government of Bengal, the whole resources of that Government were 313 lacks of rupees. Look to your Journals, and you will see, that when he quitted the Government they were 520 lacks, and that now they are 550 lacks. In opposition to this *brad fact*, is it not enough to make a man lose his patience, when he has sat assisted in the House of Commons, that Bengal has declined during his Administration?—Sir, there is one other point that I must mention. The Hon. General says, if I saw anything wrong, it was my duty to state it to this House. Have I, Mr. Speaker, neglected my duty in this particular? On the contrary, I am afraid I have troubled you too often; but it is a point of so much consequence, that I do hope the time will come when Gentlemen of more importance will take it up; for it is a point in which the honour as well as the justice of the House is deeply interested. Every year that the India Budget has been opened, I have told Gentlemen, that though I cordially concurred in the statements made by the India Minister, they were directly contrary to the Articles of Impeachment; and if the Resolutions were true, what was said in our name in Westminster Hall must be false. I am placed in the situation, that I must stand or fall in the opinion of this House, and of my Country, by the truth or falsity of what I have asserted.—I have repeatedly said, within this House and out of it, that we passed thirteen Articles without reading them. Did I act meanly or basely by the House? Did I lie in wait to entrap them? I warned the House of what they were doing at the time. They did it. I told them, I was sure that if they read those Articles, they would never pass them. I cannot appeal to you, Sir, for the truth of this, because you were not in the Chair at the time, but I am sure the Gentlemen who sit at the Table remember it: I entreated, I implored the House to read the Articles before they voted them. They also are directly contrary to Resolutions upon your Journals; they criminate the Directors and the King's Ministers. These Articles denominate Hyder Beg Khan, the Minister of the Nabob of Oude, an implacable tyrant; and they condemn Mr. Hastings for putting so much power in his hands. Yet Lord Cornwallis tells you (for you have his letter upon your Table), that in his personal arrangement he has merely adhered to the system laid down by the former Governor General, Mr. Hastings. All the subsidiary arrangements are formed, as his Lordship says, with a view to strengthen these principles, and render them permanent. To this the King's Ministers reply, through the Directors, that having attentively considered the whole subject, and perused the whole preceding, they approve of the general arrangement, and of the principles on which it was formed. What principles? why, Sir, the very principles which this House, without knowing one word about the matter, has condemned; the principles which, when carried into practice, procure an annual subsidy of fifty lacks from the Nabob, which pays the expense of one third of our army. I hope the House will excuse me, if upon this subject I should a little forget the moderation that becomes me; but the contradictions are so palpable, that I own I am lost in astonishment when I reflect upon them. Let not the House be displeased with me for laying facts fairly before them. Those are the same who have abused the generous confidence which this House placed in them,

unsupported by any evidence, asked dismissed from his employment; or, if he Mr. Moore whether he had, not been would so have it, whether he had not

them. Sir, I hope I shall not be accused of disrespect to the House of Commons; I call God to witness, I mean it not. The House consisted in their Committee; after agreeing to the Impeachment, it voted the Articles without discussing the particulars; and, since, it has happened, that many acts are stated as criminal, which the House has sanctioned as highly meritorious in another character. And now, Mr. Speaker, having entered into a full, and I hope a satisfactory explanation of my conduct, let me suppose for a moment, that I have acted irregularly or improperly in what I have done. To what I have said I have put my name—some must surely that I meant to do no wrong. But, admitting for a moment that I have been misled; by whom is it that I have been misled? By the Gentlemen opposite to me; and I do confess myself at a loss to perceive with what degree of consistency such a Motion as is now proposed can come from such a quarter. The Hon. Gentleman is pleased to compliment me upon my knowledge of my duty as a Member of Parliament. I do assure you, Mr. Speaker, it has been my study to acquire that knowledge, and if I have erred, Sir, it is by following what I thought justifiable precedents. I never could conceive, Sir, that a moderate temperate examination of what is stated in a publick paper could have been construed into a breach of privilege; but much less, Sir, could I conceive it possible after perusing the curious precedents that I shall now produce. I will not quote the common Parliamentary Debates or the newspapers as authority, but I will ask every Gentleman in this House, Whether it has not been the invariable practice of Gentlemen opposite to me, to arraign with the utmost freedom such acts of the majority, as they disapproved? I mean in public meetings, in the shape of resolutions, &c. But, Sir, I will now bring it to a nice matter of fact—And first, I shall bring to your notice a pamphlet entitled, “Mr. Burke’s Speech on the Motion made for Papers, 28th Feb. 1785.” Every thing contained in that speech the Gentleman had a right to say; but with what consistency he can support a motion against me, after publishing many months subsequent to the speech this pamphlet, I am at a loss to discover. Surely, Sir, it was no longer a Speech, but, according to the law of this House, a libel upon Parliament. The first passage that I shall select is as follows, and the House will see it is very much in the style of the Gentleman’s orations in Westminster Hall. “Let no man hereafter talk of the decaying energies of nature; all the acts and monuments in the records of peculation, the consolidated corruption of ages, the pateras of expropriation plunder in the heroic times of Roman iniquity, never equalled the gigantick corruption of this single act. Never did Nero, in all the insolent prodigality of despotism, deal out with his Prætorian guards a donation fit to be named with the largesse showered down by the bounty of our Chancellor of the Exchequer on the faithful band of his Indian scapvoys.” The next is as follows:—“Your Ministers knew, when they signed the warrant of the Carnatick, that the Nabob would not only turn all the unfortunate farmers of revenue out of employment, but that he had denounced his severest vengeance against them for acting under British authority. With a knowledge of this disposition, a British Chancellor of the Exchequer and Treasurer of the Navy, incited by no public advantage, impelled by no public necessity, in a strain of the most wanton perfidy which has ever stained the annals of mankind, have delivered over to plunder, imprisonment, exile, and death itself, according to the mercy of such execrable tyrants, all the unhappy and deluded souls who, taught by uniform example, were still weak enough to put their trust in English faith.” This Gentleman then proceeds to argue, with the utmost freedom, that an arrangement formed by the Right Hon. Gentleman below me (Mr. Pitt) under the sanction of Parliament, was a corrupt and scandalous bargain, in order to repay certain persons the expences they incurred by bringing Members into this House at the last election; and will this Gentleman vote against me for my moderate discussion of a newspaper speech? The next respectable authority that I shall quote, is from a pamphlet written by Richard Brinsley Sheridan, Esq. A “Comparative View of the India Bills of Mr. Fox and Mr. Pitt, addressed to J. M. Esq. [with eight stars,] in Staffordshire.” In this, the Acts of the House and of the Legislature are treated with the utmost freedom. I shall only select the following passages, because they will not tire the House:

1. “As to the Declaratory Law itself, and the plea which was made for it, we seem to be perfectly agreed upon that subject. The papers laid before the House of Commons certainly contain, as you observe, a complete refutation of all the pretences upon which the sending out the four regiments to India was defended as a measure of necessity. And still more strongly do I agree with you in your remarks upon Declaratory Acts in general, and upon

been divested of his trust, in consequence of charges exhibited against him and the other Members of the Board to which he had belonged, of disobedience of or-

upon the nature of this Declaratory Act in particular. It is indeed an alarming and an unfortunate event in the History of Parliament—for it is one that shakes the foundation of that security which all men hope from law, and of that respect which all men owe to it—to see the Representatives of the People persuaded to intercept the ordinary course of justice, to assume to themselves a judicial character, and, upon the suggestion of the King's Ministers, to determine a question of property, in favour of the servants of the Crown, against the claims of the subject!

“Nor can our apprehensions of the consequences of this precedent be diminished, by reflecting upon the manner in which the measure was carried through the House of Lords; by reflecting, that the Supreme Court of Judicature in this country should have been induced by any influence, or by any eloquence, or upon any plea of necessity, pretended or real, to decide—with unparalleled precipitation—upon a construction of law—in the absence of the Judges of the land, and without granting a hearing to the parties interested in their decision.”

2. “If it were worth reasoning or arguing upon, it would be no difficult matter to prove, that this crooked system of involved mystery and contradictory duties could never have been meant for any fair purpose of good government.”

3. “Whether under this loose and arrogant mandate, so unlike the temperate precision of a British law upon such a subject, there is any one right, power, or property of any sort, left to the Company, may reasonably be doubted.”

Here, Sir, Acts of Parliament are most freely spoken of. I do not say improperly, because I approve of a fair and liberal discussion of political subjects; but how the Hon. Gentleman who wrote that Pamphlet can vote against me, I cannot conceive. The last authority that I shall quote, is that of the Hon. General himself, who is also an author, and not a despicable one. When he was on bad terms with some of the Gentlemen who sit near him, he wrote the following passage in an address to his constituents at Preston:

“During the last Session of Parliament an enquiry was instituted. The detail of the attempts made by Ministry to defeat it, is too notorious to be necessary upon this occasion. They at last contrived that it should be left imperfect.” Is this no reflection upon the House? In another place the Hon. General says: “If the state of the nation in its wars, in its negotiations, in its concerns with its remaining colonies, or in the internal policy and government of these kingdoms, can afford the smallest countenance to an opinion of integrity and capacity in Administration, I am ready to abide every censure, for being, what I am, a determined enemy to it; I have been in a situation to see that in a complicated and alarming war, when, unsupported by any alliances, the kingdom was left solely to its own native military force, that sole reliance was discouraged and depreciated. I saw a systematical design of vilifying and disgracing every officer whom those Ministers had ever employed by sea or land; and those most, who stood highest in their several professions. The ruin of officers forms almost the whole of their military system; and if I have experienced my full measure of their hostility, it only shews the extent of their plan; having furnished little else than my zeal and industry as a title to their malevolence. As to their political plan, its object is to impose upon the nation from Session to Session. Far from profiting themselves, or suffering others to profit by better experience, they exist by bringing forth a succession of deceptions. I cannot shut my eyes against my own certain knowledge of some of the most fatal of these deceptions respecting America; nor restrain my just and natural indignation at their efforts, without forfeiting every feeling for my Country.”

Let not Gentlemen suppose, because I stop here, that the subject is exhausted. I hold in my hands twelve speeches and pamphlets written by the Right Hon. Gentleman (Mr. Burke), and I will engage, that from each I extract expressions infinitely stronger than any which I have used upon any proceedings of the House of Commons. I deny that I have ever said or written a word disrespectful of this House. The House has been deceived and misled; that I have said; I say it again; and I will prove it, if the House please, by an appeal to your Journals. I am much obliged to the House for their attention, and will only detain them a moment longer. In one of the General's Motions, he calls me “now, or late, an agent of Mr. Hastings.” I was in that character when he was abroad; I am not so now, unless he means as his warm and steady friend, who am ready to devote every faculty that I have to his service. So far as that I avow myself, but I deny that I wrote the letter complained of in concert with Mr. Hastings or any other person. We reside in different countries very distant from each other; and the letter I wrote on Sunday last, at my house in the country, from whence it was dated; nor was it seen by a human being till I delivered it myself.

dera and neglect of duty ; or, at least, communicated to them by the Supreme Council ?

self into the Printer's hands on Monday, unless the first sheet, which I believe was lying on the table when one of my daughters came into the room. I am thus particular, Sir, because the Hon. General insinuated that every thing done was done in concert, and as part of a settled system. So in the case of Captain Williams ; I do solemnly declare that Mr. Hastings knew nothing about that matter. The moment I saw the attack upon him, I did what I am sure he would have done by me, I sent him the paper, and answered in the mean time as far as came within my own knowledge. As to the poetry to which the Hon. General alludes (the Letters of Simkin), it is so excellent, I fancy the Hon. General reads it with pleasure ; but I do assure him that the author of those verses is too independent both in mind and fortune to act under the direction of any person, or from any other motive than his own conviction ; and here, Sir, I trust my cause, having the fullest reliance upon the justice and candour of the House." Major Scott then withdrew.

General Burgoyne rose again and moved his first general Resolution, which was seconded by Mr. Grey, and agreed to by the House. He next offered to move his second Resolution, directly charging Major Scott with having violated the law and usage of Parliament, and been guilty of a Breach of Privileges.

Mr. Sheridan rose, for the sake of the regularity of the proceeding, and said, he conceived the House ought first to vote the letter of the Hon. Member, as printed in the newspaper, a scandalous and libellous writing, before they voted any thing personal to the author.

A motion was accordingly framed, and on its being read from the Chair,

The Chancellor of the Exchequer rose and said, though no person could agree more heartily with the general principles laid down by the Hon. General, nor would be more anxious than he was to preserve the privileges of the House from attack (and if the paper, upon due consideration, should be found to bear out the construction put upon it, he conceived there could be no question but that the censure of the House must fall on the transaction) ; yet, as a lax practice had obtained of late years in respect to publications relative to the proceedings of Parliament, he submitted it to the candid judgment of the Hon. General and his friends, whether it would not be more fair, not immediately to proceed to vote the paper a scandalous and libellous writing, but to give Gentlemen time to examine whether it was so or not, before they were called upon to vote it ? However lax the rule had hitherto been, the Chancellor of the Exchequer said, it was undoubtedly proper that it should be enforced ; but then, when the system of strict enforcement was proposed to be adopted, he trusted, every Gentleman would see the propriety of doing equal justice, and would not think it warrantable suddenly and precipitately to apply it to a single case without deliberation. He declared, he did not think it right to say what his opinion was, on the first hearing the letter in question read ; indeed it was scarcely possible for him to do so with any satisfaction to his own mind, or with any colour of justice to the party concerned ; and therefore he conceived it would be more proper for the House in general to take the matter up with deliberation, and not on the impulse of the moment to vote either one way or the other. Under this idea, the Chancellor of the Exchequer concluded with moving, " That the Debate be adjourned ;" and he said, he would name any day that should be most convenient to the House. Thursday next was the day fixed on, and the Motion was put accordingly from the Chair.

Mr. Fox said, he had no objection to the proposed adjournment of the Debate, but something had fallen from the Hon. Gentleman which he did not clearly understand. The Right Hon. Gentleman had talked of the *lax* practice that had obtained in respect to Libels on that House and its proceedings, as if they were about to depart from any established rule of the House. Mr. Fox declared he was not aware that the rule had ever been departed from. He knew it had not been universally enforced ; but whenever complaint had been made of a Libel on the House, or any of its Members, the rule had, he believed, been uniformly and regularly carried into execution. On the present occasion, he hoped the Motion would meet with a full discussion in a full House ; because, if ever there was a case particularly entitled to the consideration of the House, it was the case of an Impeachment, and a trial upon it, the Managers of which had the strongest claims on the House for their protection and support against all Libels and Libellers ; and such, he trusted, they would experience next Thursday.

The question of adjournment of the debate was put and carried.

THURSDAY, May 27.

Mr. Wiggley rose in the House of Commons, and stated, that he had something to say on the part of Major Scott.

The

Mr. Moore said that such charges had been communicated.

Mr. Dallas, upon this, observed, that as he spoke upon the authority of

The Speaker desired, for the sake of regularity, that the Order of the Day might be first read; which having been read,

Mr. Wigley then said, previous to the House proceeding to resume the debate, Major Scott wished to be permitted to add a few words to his defence; which being immediately granted,

Major Scott entered, and took his seat, and said, he wished to say a few words upon a point in which, from what had been mentioned to him by some Gentlemen, he conceived, he had not made himself sufficiently understood the other night. He had meant to state in the speech which the House were so indulgent to hear, that nothing was ever farther from his thoughts, than to do an act which should give offence to the House of Commons, and to express his concern, if what he had done should have that effect. At the same time, however, he must beg leave to state, that, though not a very old Member of Parliament, he had been diligent in an attention to his duty; that he had observed upon many great and important subjects agitated within those walls, that House had waived its privileges, or at least had for a long time forbore to execute them; and in no one public matter more than in the Impeachment, and in all the discussions that led to it. Were not the Charges, as originally presented by a Right Hon. Gentleman (Mr. Burke), publicly sold, almost as soon as the copies were printed for this House? The Articles the same. Was not a very curious Letter, signed by all the Managers, and sent to Mr. Francis, also printed in the newspapers? Every debate that led to the Impeachment was published, and every day's proceedings since the trial began, in more than two or three editions. He had taken the liberty to state the other night a variety of other publications, and one in particular from a Right Hon. Gentleman (Mr. Burke), in which he had described the conduct of the Minister as more corrupt than Nero's, and all the tyrants of antiquity and modern days put together. This was a publication couldy issuing from his closet five months after he was supposed to have spoken it in this House. It was the more alld upon two Right Hon. Gentlemen (Mr. Pitt and Mr. Dundas) and upon the House. It called an Act of the Legislature "a corrupt Act," and ascribed the conduct of those Gentlemen to a desire to repay certain Gentlemen the expence they had incurred in bringing Members into this present Parliament. The Major concluded by saying, that if he had acted wrong, he should feel as much concern as any man, but he had done so by following the example of those Gentlemen who had made the present complaint.

The Major having withdrawn, the Speaker read the following motion from the Chair:

"That it appears to this House, that the letter published in the *DIARY, or Household Register*, of May 18, is a scandalous and libellous paper, reflecting on the Honour and Justice of the House, and on the conduct of the Managers appointed to conduct the Impeachment now pending against Warren Hastings, Esq."

Mr. Wigley rose to object to the Motion as unnecessary, conceiving the apology made by the Hon. Member to have been sufficient for the offence. He declared himself to be always ready zealously to maintain and defend the privileges of the House; but in so doing, he wished to make a distinction between a wilful Breach of Privilege, and a Breach that might have been occasioned by the remissness and relaxation of the House as to the exercise and enforcement of their own rules. Every day, he said, afforded a proof of the remissness of the House, by the statement in the public papers of their proceedings. The Hon. Gentleman had, in the present case, only answered an account of a speech that had been given the day before in the same paper; and being anxious to contradict assertions he believed to be false, he had fallen into the errors complained of. He acknowledged that this was no excuse, but he wished it to be considered as an extenuation, that might induce the House to receive as sufficient the apology they had heard from the Hon. Member; especially as the rule of the House had not been observed with the rigour now proposed for near a century. If the House, however, should proceed to notice the libel complained of, they would not do justice, unless they should enter into an enquiry and institute a similar proceeding against the various libels produced by the Hon. Member last Friday, which he (Mr. W.) said, he would give them an opportunity of doing, by moving to enter into a Committee for that purpose. He declared he did not say this as a threat. Mr. Wigley made a few observations on several of the rules and orders of the House, and particularly on that declaring the admittance of strangers to be a breach of privilege, which breach of privilege had, he observed, for several years been wholly disregarded. Would it, he asked, be considered to be just and reasonable, if the House did, after admitting strangers, order the doors to be locked, and direct their Sergeant to take

charges which were to be found in the Managers knew to be in existence, and Company's archives, and which the might produce if they pleased, the Court

into custody every stranger present? He wished to compare that case with the present. Mr. Wigley reminded the House, that they had no proof that the Hon. Member was the author of the Libel, except by his own confession; and he would appeal to every Lawyer on both sides the House, whether a confession ought not to be taken all together, that the party might have the benefit of the whole of it. Had the word *false* made a part of the Motion, Mr. Wigley said, the House must necessarily have gone into a Committee to enquire into and ascertain the fact before they had proceeded. In that case, there might, he observed, have occurred great difficulties. He declared, that whatever should be the decision of the House, he had no doubt it would be proper; and, though but a young Member, he knew his duty too well not to acquiesce in it, let it be what it might; he hoped, however, on the considerations that he had stated, that the House would not proceed hastily, but would be satisfied with the apology given.

Mr. Burke rose next, and asked what sort of an apology the House had heard, and what was the Hon. Member's indication of repentance? An audacious avowal of the Libel, and a direct recrimination upon the Members of the Committee of Managers! For his part, and he doubted not he spoke the sentiments of the Managers in general, he equally defied the Hon. Member, his friend, and his friend's friend, and all that they could effect. Having made this exordium, Mr. Burke said, the argument of the Hon. Gentleman tended to cut up the privileges of the House by the roots; because, if every Breach of Privilege were to be prosecuted, it would do more harm than good. There was scarcely a man in that House who was not every day guilty of some Breach of Privilege or other; but the House shewed its wisdom and its prudence in passing over a great number of Breaches of Privilege, and noticing such only as from their nature absolutely demanded the notice of the House. Did not every man know, that in cases of assault, from the mere laying a finger on another, down to direct murder, each was equally an assault; but would any person in their senses recommend the proceeding upon the Stoics' principle, and punishing every assault, the slightest as well as the most atrocious equally? In like manner the present question was not, What Breaches of Privilege had passed unnoticed? but, Whether a most atrocious Libel on their honour and justice ought to escape the vengeance of that House? The Libel in question was a direct attack on the Managers of a Prosecution of the most solemn nature, instituted by the authority of the House, while they were endeavouring to bring a criminal, loaded with an unexampled mass of crimes, to justice. Would the House suffer the delinquent to use his unjustly acquired wealth in slandering the means by which he was to be brought to justice? It was not the matter of the Libel, but the vehicle of it that he condemned. With regard to the publication of speeches, the practice had obtained from the time of Lord Clarendon to the present day, and, when discreetly exercised, no harm could result from it; but, on the contrary, much good might accrue to the public, who ought to be informed of what passed in that House; and it would be for the wisdom and prudence of the House to decide what should be published with impunity and without notice, and what should not. A very distinguished Member of that House, the late Mr. Grenville, had, by the publication of a celebrated speech of his on the Middlesex election, recorded his constitutional principles for ever; and he had reason to believe the practice was occasionally, and with great propriety, followed by some of the family to this day. Having justified the practice of printing speeches, Mr. Burke recurred to his animadversions on the conduct of Mr. Hastings and his agents: While the Managers of the Impeachment were discharging their duty to the House, and accusing the principal, his agents, he declared, were accusing his accusers, and the Libel complained of was nothing more than the last of a long list of Libels systematically manufactured by Major Scott, who had not yet said a word of all his other Libels, though they were matters of the greatest notoriety. As a proof that the Letter in question, flagitious as it was, was not the most atrocious of all, Mr. Burke produced and read a paper stating its contents to be the words of a conversation held between Major Scott and a Noble Lord (Lord Dover), when Major Scott delivered to that Noble Lord the Petition of Mr. Hastings to present to the House of Lords. The words used by Major Scott, as Mr. Burke read them, were, that "the whole of the Proceeding on the part of the Managers had been in the highest degree iniquitous, cruel, and unjust." Mr. Burke commented upon the criminality of such a declaration coming from a Member of that House. He said, it was a most flagitious and outrageous Libel on the Managers. What (he asked) was a Noble Lord, one of the Judges, who were to decide upon the cause they were employed in the conduct of, to think of them, when they were called to carry on that cause, and a Member of the House who were the

must see that the Counsel had not thrown out groundless insinuation against the witness.

Mr. Moore, to do away the impression which this observation might make, begged leave to explain himself. The

prosecutors came down from the place where he had voted the prosecution, and told one of the Lords, that he was not to credit the words of the Managers, because their motives were "iniquitous, unjust, and cruel?" Mr. Burke said, he laid out of the question all that concerned himself; most men were deemed partial in their own cause, and it was right they should be so considered; he was indifferent to all that related to him personally. He had ten years together, from the year 1780, been employed in the work of the Trial; and, from the arrival of Major Scott in England, he had been the object of the Libels poured forth in such torrents against him. That House had answered them effectually, by appointing him a Member of a Select Committee to detect Indian Delinquencies; at a subsequent period, by granting him additional powers; afterwards by sanctioning the produce of his labours; and lastly, by adopting the Charges, and instituting the Impeachment. Their conduct in this last respect, he said, was a complete refutation of all the calumny and scandal so industriously heaped upon him. But now these harpies were not content with shedding their filth on him singly, but they dared presumptuously to make the House parties, and arraign the justice of its proceedings. For his part, he entertained an utter contempt for the *whole gang* of those who called themselves the friends of Mr. Hastings; but the House could not, in consistency, and from consideration of what was due to their own honour, disregard what he was satisfied was part of a system to cover the frauds, perjuries, and villanies of the delinquent, and an attempt to turn into ridicule matters the most serious and awful. Mr. Burke declared, the strongest sign of a depraved mind was the being able to break a wicked jest upon the most grave and important matters. It shewed that the wickedness of a nation was rooted, and that notions of propriety and decency were lured to a lethargy and abandoned. Mr. Burke read the extract from the proofs adduced in the Benares Charge, which had caused so much sensibility in Westminster-Hall, and asked if such horrid barbarities as it stated were fit subjects for mirth or ridicule? Having declared that if the extract he had read was an invention, it was no invention of his; and having deftanted on the affair of Deby Sing, which he declared himself ready to prove there or any where else; Mr. Burke professed himself a sincere friend to the Liberty of the Press, considering it as a sacred thing, and the main Pillar of the Constitution: but (he asked) was it a proof of the Liberty of the Press to suffer the Agent to a Criminal to libel the justice of that Court before which the Criminal was on his trial? He was satisfied, he said, that the House was not base enough to separate themselves from the Managers, and set them like raggamuffins led to a post of danger, where they would be well peppered, without standing forward in their defence. He declared he was not afraid of the Liberty of the Press, neither was he afraid of its licentiousness; but he avowed himself afraid of its venality. Mr. Hastings was able to buy up all the newspapers, and he had heard, from what he deemed good authority, that 20,000*l.* had been expended in the publication of Mr. Hastings's Libels. With regard to the Hon. Gentleman's threatened Committee of Enquiry into the Libels published of late years, he was ready to meet the whole phalanx of India Delinquents with their Associates upon that subject. He said, it was absolutely necessary that the House should proceed, as he knew it to be one of the floating opinions abroad, that the House was against the prosecution continuing any longer. If they were, they ought to have resolution enough to declare it, and discharge their Managers; if on the other hand, as he believed was the fact, the report was wholly without foundation, he was ready to go on, and to wear himself out in their service; for he thought it the most honourable one that any man could be employed in. But it behoved them to act firmly that day, since he defied any Member to produce an instance in the history of this country, while the House of Commons were prosecuting a most powerful delinquent, of the Managers of such prosecution being libelled by one of their own body. He ran through a long catalogue of enormous crimes, all of which he imputed to Mr. Hastings, and said, he defied the united calendar of jail-delivery throughout the kingdom, to produce a list of offences in any proportion in point of foulness and atrocity. Major Scott, he observed, had denied that he was Agent to Mr. Hastings at present. What was he then? He was either Agent, or something more; he was Mr. Hastings himself. Their sexes, names, characters, and constitutions, were confounded. If he went to the India House, he saw Major Scott copying out papers, and paying money for Mr. Hastings; at the House of Lords he saw Major Scott presenting a Petition to a Noble Lord, signed Warren Hastings, which Major Scott had afterwards told him, in that House, was his drawing. At their own Bar they had seen Articles of Defence exhibited by Mr. Hastings, who had made it his boast that he had drawn those Articles in five days,

charges brought against the Board of ^{edly} were for a disobedience of orders, which he had been a Member, undoubtedly and neglect of duty. But the act on which

days, in answer to Charges which had cost him (Mr. Burke) as many years to prepare; and afterwards, when Mr. Hastings's Counsel expressed their dissatisfaction at those Articles, Major Scott came into Westminster Hall, and said, that he and others wrote them; the true name of Mr. Hastings therefore must be *Legion*, since every thing was done by *Scott and Co.* Mr. Burke declared he was not afraid of any of the Libels he had alluded to, for they were not remarkable either for the elegance of their style, the beauty of their composition, or the force of their arguments; but, such as they were, they called for the vengeance of the House, and especially the daring Libel then in question, that they might mark to the whole world their detestation of the system practised by the criminals of India to defeat the justice of that House and the Nation.

The Chancellor of the Exchequer said, it was necessary for him only to say a few words on the Motion, and in doing so he should lay aside many of the topics introduced by the Right Hon. Gentleman, as wholly foreign to the matter contained in the paper complained of, and which consequently could have no connection with the immediate subject of the debate; he should lay aside also every consideration of the other libels that the Right Hon. Gentleman had mentioned, because it was impossible for him, standing up in that House, to know any thing of them, unless by a regular complaint they had been brought upon the Table. In like manner, he should take no notice of the Right Hon. Gentleman's aggravation of the facts contained in the Charges that formed the Articles of Impeachment; those facts being now under the consideration and subject to the decision of the proper tribunal, of course could not be the proper subjects of discussion at present in the House; but with regard to the other arguments of the Right Hon. Gentleman, he had not at all changed his opinion since he had declared that he thought there was matter in the Articles fit for that House to subject to the investigation of the House of Lords, and to carry up to their Bar in the shape of an Impeachment. Nothing that had passed since having occasioned him to alter his sentiments, he necessarily declared, that he thought the House bound in justice, and in discharge of its own honour, to give every proper support to the Trial, and to the Managers, whom they had authorized to carry it on. The proceeding was a serious one, and it ought to be conducted with all the solemnity such a proceeding necessarily demanded; he therefore was disposed, on all occasions, to give every support to the Managers that a consideration of the justice due to others would admit; and whenever they had applied for the protection of the House, the House had been always ready to give it, excepting in a single instance, where, upon the application of an Individual, it had appeared that he was, from his peculiar situation, entitled to their first consideration. Gentlemen, the Chancellor of the Exchequer said, would easily perceive that he alluded to the application of Sir Elijah Impey, who certainly was in justice entitled to the interference of the House in the manner in which it had interfered. With regard to the principal Charge contained in the paper complained of, it was impossible to go into any discussion, because it was either a question of opinion or a question of intention; in neither of which cases any one man could judge for another; not that he meant by this remark to fix any imputation on the Right Hon. Gentleman as to the matter alledged in the paper; no man more readily acquitted the Hon. Gentleman of a pre-determination not to close the prosecution in the present Session of Parliament. It was equally unnecessary, he observed, to investigate the truth or falsehood of the Libel complained of; it was sufficient to read the paper to see what it was, and there could not be a doubt but it was a Libel on the Managers of a prosecution authorized by that House, and therefore he readily admitted that it was a Breach of the Privileges of the House. The only question therefore was, in what manner it ought to be taken notice of. The general purport of the Motion he was ready to agree to, but it did not strike him what part of the Libel would support the words, "highly reflecting on the Honour and Justice of the House." That did not appear to him to have been made out. With regard to the Libel itself, as there had certainly been for some years a relaxation of that House in the practice of maintaining its privileges so rigidly as formerly, and many Libels highly reflecting on the House had passed unnoticed; though such a circumstance undoubtedly was no justification of the paper complained of, yet every candid man, he should conceive, would readily agree, that it ought to weigh in mitigation of the offence; and therefore he would recommend it to the House to take the matter up with temper and moderation, rather with a view to mark their disapprobation of such publications, and to hold out a lesson to persons to avoid incurring their displeasure in future, than by any unnecessarily harsh proceeding, to give the world reason to suppose, that the motive was founded in personal resentment, or any thing that could be construed into a vindictive feeling, neither of which, he

the charges were founded, he said, was dictated of their conscience and their duty, DISCHARGED FIFTEEN UNFOR-

was persuaded, would have the smallest influence on the minds of any one Gentleman of that House on the present occasion. The Chancellor of the Exchequer said, he had thought it necessary thus early to intimate his sentiments on the subject; and if the words "highly reflecting on the Honour and Justice of the House" were omitted, or Gentlemen would point out what part of the letter complained of warranted their insertion in the Motion, he could have no objection to it.

Mr. Fox contended that a libel like that complained of, being directly levelled at the Managers acting under the orders of the House in the prosecution of an Impeachment authorized and instituted by the House itself, was in his mind a libel in defiance of the Honour and Justice of that House, and the most proper of all others to take up. A Libel on the House itself was not, he said, of nearly the same dangerous consequence, because the House was armed with sufficient powers to protect itself; but a Libel on the Managers might be considered as a Libel on individuals, who were, comparatively speaking, helpless, and, not having the power to protect themselves, must necessarily look to the House for protection. He reprobated the argument of Mr. Wigley, that the House ought to take notice of or prosecute every individual breach of its privileges, or not to prosecute them at all. In either case, he said, the House would act most unwisely; it was by a prudent exercise of their discretion, and by distinguishing the nature of one Breach of Privilege from another, that they would best preserve their privileges. Were they to prosecute in all cases of Breach of Privilege indiscriminately, their whole time would be spent in criminal proceedings, and the House would become a nuisance to the country, instead of a security to its liberties. If on the other hand they were to fall into the other extreme, and prosecute in no instance, the House would incur the public contempt, and become altogether useless. It was, therefore, a bad extenuation of any stated offence to say, that the House had neglected to take notice of other libels on the Managers, and therefore it ought to be peculiarly mild in the mode of punishing the author of the Libel now complained of. Was its merciful remissness in some cases any reason why it ought not to proceed with severity in cases of Breach of Privilege the most flagrant and outrageous? Was it an argument that would be borne in a Court of Justice, if on a prosecution for a Libel against him, it was to be said that Mr. Fox bore a torrent of Libels for fourteen years together with patience, and therefore enticed the Libeller as it were to publish one more? On the contrary, would it not be considered, that his forbearance so long had heaped upon his Libeller a debt of gratitude, which aggravated his crime, if, after so long a forbearance on the part of Mr. Fox, he at last thought proper to prosecute. For his part, Mr. Fox said, it had been his lot, and that of his Right Hon. Friend, to have been hounded grossly for the greater part of their political lives, but they neither of them had thought it right from prudent motives to take any notice, except in a single instance or two, of the Libellers; and, feeling that their prosecuting might be attended with rather worse general consequences than the Libels did them harm, they had treated the Libels and their authors with scorn and contempt. But the case was widely different between a Libel on individuals in their private capacity, and individuals sanctioned by the authority of that House, and acting as Managers of an Impeachment instituted by that House. Neither was the fact true, as the Honourable Gentleman who spoke first in the Debate, and the Honourable Gentleman who had just sat down had supposed, that the House had relaxed in supplanting its privileges, by not taking proper notice of such Breaches of Privilege as had appeared to deserve their notice. As often as a complaint had been made, the House had grounded a proceeding upon that complaint. On the subject of the present Impeachment only, the paper complained of now was not the first, the second, nor the third. Libel that the House had taken notice of, but the fourth that had been stated to it. The Morning Herald had been ordered to be prosecuted by order of the House for a Libel. Another paper had been ordered to be prosecuted, and Mr. Stockdale had likewise been ordered to be prosecuted; it was true, that Mr. Stockdale had been acquitted; but that did not alter the present argument. And the Printer of the World had been prosecuted likewise by order of the House, and convicted recently, within this day or two. It was not true, therefore, that the House had abandoned the defence of its privileges by neglecting to punish breaches of them. With regard to the degree of criminality between Mr. Stockdale, or the Printer of a Newspaper, and Major Scott, there was no comparison. Mr. Fox said, a Bookeller and a Newspaper Printer could be supposed to have no personal view in the libel they published, and could only act upon public principles in the way of their profession and trade; but Major Scott had no excuse of that kind; being a Member of Parliament, as the Right Hon. Gentleman

FORTUNATE NATIVES, whom the *Deewan*, *confused*.—Whether such an act was a *violation of the Charter*, had **ILLEGALLY** breached, or a discharge of duty ; whether

Gentleman had well stated it, he had an opportunity of making any complaint against the Managers that he thought their conduct deserved ; he might have done so fairly and openly, and had no occasion to libel the Managers from one end of the kingdom to the other. Mr. Fox added a great variety of other arguments to prove, that if ever a Libeller had justly called down the heavy vengeance of the House, it was Major Scott, who, from the commencement of the proceedings on the Impeachment, had systematically traduced and vilified the Managers. As an argument of intigitation had been grounded on the Managers having for two years together suffered themselves to be libelled day after day with impunity, Mr. Fox said, it was fortunate that they had at length taken up the matter, for had they suffered it to go on for two years longer, that might have been held to constitute a justification of any Libel against them whatever. Mr. Fox said, Was it not enough for their Libellers that they might drag forth every transaction of their private lives, that they might enter their dwellings, expose the weaknesses that men might naturally be supposed desirous of concealing, and, in short, trace out every single circumstance of their conduct to ground a charge of traduction upon, but they must attack them when acting in the capacity and character of Managers of an important criminal prosecution, endeavouring to bring a great delinquent to justice, and while they were employed by the authority of that House in a great judicial proceeding, on the event of which the future happiness of millions depended, and possibly the existence of the British Constitution, since it was intimately connected with that House enjoying the free exercise of its inquisitorial powers, which he contended were struck at by the Libel in question ? Mr. Fox, before he sat down, said, he was glad to find that he was likely to have the vote of the Right Hon. Gentleman on the present Question ; he declared he agreed with the Right Hon. Gentleman in the greatest part of his arguments, but could not help differing altogether as to the latter part of his speech, with regard to the propriety of a gentle censure : so convinced was he that the contrary ought to be the case, that, invidious as it might appear, if there should be a division on the subject, he said he should vote for the severer mode of proceeding.

Mr. Dundas said, he should speak but for a very short time ; he rose merely to remark on certain parts of his Right Hon. Friend's speech, which the Right Hon. Gentleman who had just sat down had completely mistaken. The Right Hon. Gentleman had talked of the forbearance of an Individual, and had said, there arose out of that forbearance to punish his Libeller a debt of gratitude which made his again libelling him the more atrocious offence. Undoubtedly, Mr. Dundas said, the argument was true ; but the forbearance of an individual had been no part of the argument of his Right Hon. Friend, who had argued on the forbearance of that House of late years in almost all cases of Libels whatsoever touching its proceedings, a fact which was undeniable, and which had been exemplified in a variety of instances. Another matter the Right Hon. Gentleman had laid great stress on, made it necessary, Mr. Dundas declared, for him to take notice of, in order to guard against an improper impression going abroad ; and therefore, he hoped when the Right Hon. Gentleman took such pains to point out the enormity of a Libel on the Managers of the Impeachment, he did not mean either on his own part, or on behalf of the other Managers, to lay it down as a rule to be observed without doors, that no other libellous attack on that House, on its proceedings, or on its Members, ought to be seriously treated or taken notice of. [Mr. Fox said across the table, " Most undoubtedly, he had no such meaning."] The reason Mr. Dundas had thought it necessary to observe upon this, he declared, was, that the Right Hon. Gentleman had stated such a variety of excuses for libels upon the House of a different nature, that he feared, if he had suffered what he had said to have passed unnoticed, it would have gone abroad as a doctrine laid down upon the authority of the Right Hon. Gentleman, that an Impeachment and the Managers of it, and all that related to them, were the only subjects on which a Libel ought in that House to be deemed criminal. The fact undoubtedly was, that scarcely a Session had passed of late years, without producing one Libel or other on that House, or upon individual Members, which had not been at all seriously noticed. No later than a day or two after the debate on the motion for the Repeal of the Tobacco Bill, a meeting had been held at the St. Alban's Tavern of the Tobacco Manufacturers, who had sat down and drawn up a set of Resolutions, containing some of them as gross a Libel on the proceedings of that House, and on several Members for words spoken by them in their places, as ever was printed. They had done him, Mr. Dundas said, the honour to make him the object of one of the Resolutions, grounded on a misrepresentation of his argument ; but

It was honourable or dishonourable to the Board, whether it deserved dismissal or reward; and whether dismissal on such an account was to be called

he had taken no notice of it; and that because, on reading it, he had not found himself angry enough with it to make it a subject of serious complaint; and for the same reason he had passed by a variety of other libels against him. It was notorious, that of late years the newspapers had gone as far as if those who conducted them thought, if he might use such a phrase, that there ought to be as much freedom of debate in Newspapers as in that House. Mr. Dundas declared he had thought it right to say thus much in answer to what had fallen from the Right Hon. Gentleman; but in regard to the general principles stated by the Right Hon. Gentleman, he agreed with him in every one of them. The House having authorised the prosecution of the Impeachment, they were bound to support the Managers, they were entitled to claim it, and they must have it. No Gentleman could be ignorant, that the conduct of the Impeachment was a very arduous task, that the Managers had many difficulties to surmount, and a variety of obstructions to encounter. In proportion, therefore, as the task was arduous, in proportion as difficulties presented themselves, and in proportion as obstructions and impediments occurred, in the same proportion ought that House to grant the Managers their fullest protection and support. This, Mr. Dundas said, ever had been his opinion, and as often as he had heard the Managers call for support, so often he had been ready, for one, to grant it. With regard to the present case, it was undoubtedly a Libel upon the Managers; but although he would agree with the Motion declaring it to be a Libel, yet when the particular situation of the Hon. Gentleman who had avowed himself to be the author was recollected, when a due allowance was made for the Hon. Gentleman's zeal for his friend, and various other circumstances that belonged to his character were considered, Mr. Dundas said, though they could not legally or properly plead as a justification of the Letter, they nevertheless, in his mind, ought to go a great way in extenuation, and to induce the House to proceed as mildly and leniently as they could consistent with their dignity and their justice.

The Question was then put and carried without a division.

General Burgoyne rose to move the same proposition as he had read to the House on Friday, and he conceived it was unnecessary for him to do more than barely move it. The General accordingly moved,

"That the said John Scott, Esq. being by his own acknowledgement the Author of the said Letter, is guilty of a violation of his duty as a Member of this House, and of a high Breach of the Privilege of this House."

This Question having been put from the Chair,

The Chancellor of the Exchequer said, unless it was meant to follow up the Motion with some other Question, or to ground some other proceeding upon it, the Motion now proposed must either be nugatory or unnecessary, because the sense of the House could not be more strongly marked as to the nature and contents of the Paper complained of than by the words of the Motion that had already been carried. If the Motion then proposed was meant to be followed up by some other, it would be but fair in the Hon. General to state to the House the nature of the subsequent Motion that he intended to move, as Gentlemen would then be enabled to judge how far it would be right in them to vote for the present Motion.

General Burgoyne said, he thought there was something so candid in what the Right Hon. Gentleman had said, that he had no objection to comply with his proposition. The General avowed, that this part of the business had somewhat distressed his feelings, and that having brought the matter formally before the House, he had hoped that it would not have been improper in him to have left it to the judgment of the House, and that some Gentleman of greater weight and ability than he could pretend to, would have proposed the punishment that should appear to him the most adequate to the offence. But the General added, that he was not a man to shrink from his duty, however disagreeable to his feelings; and that he had it originally in his intention to have moved a vote of censure, which he should yet do if called upon. The Motion would be, "That John Scott, Esq. for the said offence be reprimanded at the Bar of the House by Mr. Speaker."

The Chancellor of the Exchequer said, that after having voted the Letter complained of a scandalous and libellous paper, he could have no objection to the Author's receiving a reprimand. He should therefore agree to the first of the two Motions, provided it were amended, and the words "gross and scandalous" were omitted. He explained, that his reason for wishing for this amendment was, that although he saw no objection to applying the word "scandalous" to the matter of the Libel, yet when they came to apply it to the person of a Gentleman who was a Member of that House, it might carry a construction,

that

disgraceful, or creditable to him and his colleagues, he would leave it to their Lordships to determine.

WILLIAM HARWOOD, Esq.
was next called. He had served the Company in India 14 years, and chiefly

that he should imagine went far beyond the meaning of the Hon. Mover of the Question. With regard to the reprimand, he had no other objection than the words "at the Bar of that House." It was usual, he believed, generally to reprimand Gentlemen, who were Members, in their places, and he should hope that there would be no objection to alter it accordingly.

This gave rise to a short conversation between the Chancellor of the Exchequer, Mr. Fox, General Burgoyne, and Mr. Burke. The three latter declared they would readily omit the words "gross and scandalous," not having intended that they should carry the construction the Right Hon. Gentleman seemed to think they would be liable to.

Just as the Question was about to be put, Mr. Jekyll rose, and after solemnly appealing to the feelings of the House on different grounds, declared he had reason to believe that the sentiments of many Gentlemen would go with him, when he proposed the previous question, in order to prevent a question so personal from being put.

Mr. Vanstittart rose to second the Motion, which he did with a few words of preface that wedid not distinctly hear.

The Chancellor of the Exchequer declared, that, painful as it was to him to differ from his Hon. Friends, he could not on the present occasion but be of opinion, that the House, having voted the Letter a scandalous and libellous paper, could not, with any regard to the consistency of their proceedings, or their own honour, let the matter stop there, but that they were bound to follow it up with something, which, though founded in moderation and leniency, should serve to mark their disapprobation of any such publication, and to hold out a lesson for the future.

Mr. Wigley said, that well as he wished the Hon. Gentleman who was the object of the Motion, yet, having professed himself determined to support the Privileges of the House, he could not but think the present Motion ought to pass; and he should vote for it under the confident expectation that the known humanity and tenderness of the Hon. General's mind, as exemplified by his conduct in private life, would induce him to move for as mild a censure as the forms of the House would admit; and therefore he hoped his Learned Friend would withdraw his Motion for the previous question.

Mr. Jekyll and Mr. Vanstittart having agreed to withdraw their Motion, and the House consenting to it, the previous question was put; but the Motion of Gen. Burgoyne, as amended, was carried.

General Burgoyne then rose to make his third Motion; and, notwithstanding the personal compliment which had been paid him by the Hon. and Learned Gentleman over the way, the General said he must adhere to his original Motion, "That John Scott, Esq. be reprimanded at the Bar of the House." The General declared, that considering the magnitude of the offence, he conceived he had moved a punishment extremely mild; and he was convinced, that in former times a much more severe punishment would have been proposed.

As soon as the Question was read,

Mr. Burke rose and declared, that he came down to the House that day in a temper as cool and governed as that in which he then spoke; that he had wished the measure of punishment proposed should be as lenient as should be consistent with the maintenance of their own honour and dignity, and consistent with the support of the Managers of a prosecution which they had an undoubted right to claim from the House. Mr. Burke observed, that the Chancellor of the Exchequer had said he would lay out of his consideration a variety of topics which he had introduced, and which the Right Hon. Gentleman considered as foreign to the subject. The Chancellor of the Exchequer, Mr. Burke said, neither had laid out of his consideration all that was not to be found in that Letter, nor ought he to have done so. He had alluded to matters that in his opinion ought to weigh with the House in mitigation of the Hon. Member's offence. If that were just, it would be equally warrantable for him, Mr. Burke said, to insist on the matters of aggravation of the Hon. Member's crime; and the greatest aggravation he held in his hand, viz. an account of the conversation which Major Scott had with Lord Dover, one of the Judges who was to decide on the Charges that constituted the Impeachment. That, Mr. Burke declared, was by far a greater libel than the paper now complained of, because it directly and broadly attacked the honour and justice of that House, declaring, that the whole of the proceeding on the part of the Managers was "in the highest degree iniquitous, cruel, and unjust." It was evident, Mr. Burke said, that although the Chancellor of the Exchequer had been so nice in regard to the epithets applied

in the revenue department. He knew *Gunga Govind Sing*, and he knew that he bore generally a very bad character.

Under the administration of the *Revenue* by Provincial Boards, which Mr. Hastings had abolished, it was not pos-

sible to Major Scott, Major Scott had not been equally sparing of epithets applied to the House and the Managers. Mr. Burke had great sticks on this transaction, which, he said, had been aware of, he would have made the ground of complaint, rather than the Letter in the Diary, as he considered it to be the most audacious libel he ever had heard of. With regard to the plea of Major Scott's being the friend of Mr. Hastings, he knew nothing of it, nor did the House. They had known Major Scott as the Agent of Mr. Hastings, and therefore he had no doubt, Mr. Burke said, but that Mr. Hastings himself was the Libeller. He mentioned the Petition to the House, which Major Scott had told them was of his drawing. He adverted also again to the Defence which had been stated at their Bar, and afterwards denied; and, after a variety of arguments entered with great energy, Mr. Burke concluded with declaring, that he knew the natural mildness of his Hon. Friend's disposition would incline him to prefer a lenient, rather than a harsh punishment; that he had, if any thing, exceeded his expectation in this respect; and that although he could not but think the proposal to reprimand Major Scott at the Bar of the House by no means an adequate punishment, he ascribed it to prudential motives, a propensity to tenderness, and an attention to the times, rather than to his Hon. Friend's opinion that it was equal to the demands of justice.

The Chancellor of the Exchequer said, after what he had before thrown out, it was needless for him to do more than move, by way of amendment, to leave out the words "at the Bar of the House," and insert the words, "in his place."

This Amendment having been stated from the Chair, and the question put, "That the words 'at the Bar of the House' stand part of the question,"

Mr. Wyndham rose, and declared, as he had heard no reasons for the Amendment then proposed, he was at a loss to know on what principle the Right Hon. Gentleman could defend it. Mr. Wyndham said, his Hon. Friend had plainly shown that forbearance in the Managers was rather a reason, that if a Libeller trespassed upon the ground of that forbearance, it ought to be considered as an aggravation of his offence, and not a mitigation; but the fact was not as the Right Hon. Gentleman had stated it, for there had been no forbearance, there having been already three several prosecutions instituted on the subject of Libels respecting the present Trial. With regard to the Liberty of the Press, Mr. Wyndham stated that there was an evident distinction between its use and its abuse, and that the very best way to preserve its Liberty was to punish its licentiousness. This had been agreed on by all who had ever reasoned upon the subject; and surely a better mode of defining this distinction could not be adopted, than by drawing the line between the free discussion of general, political, and parliamentary topics, and the discussion of judicial proceedings. In respect to the latter, it had ever been held, that *pendente lite* the subject should be confined to the Court in which it was trying, and on no account made a matter of discussion without doors. And the reason was obvious: in a judicial proceeding the Judges and the Court could not advert to extraneous matter; they must be governed by the strictness of evidence, and confined to that alone; whereas in regard to general political topics, much was at all times to be learnt from discussion without doors; and therefore the free discussion of such topics among the public at large was highly useful. This had been the case in regard to the Tobacco business in particular, which the Right Hon. Gentleman opposite to him [Mr. Dundas] had that day mentioned, and it was the duty of that Right Hon. Gentleman to have attended to the agitation of that business out of the House, as information of much importance was by that means to have been obtained upon the subject. Mr. Wyndham took pains to exhibit the manifest distinction between the unfettered discussion of political topics, and the great necessity of holding judicial proceedings sacred. Having reasoned for some time on this point, Mr. Wyndham said, that he was actuated by no motive of vindictive feeling or personal resentment. It could not be worth a moment's consideration to him as a Member of the Committee of Managers, nor indeed to any other Member, whether the Hon. Gentleman, the avowed author of the Letter complained of, was reprimanded at the Bar or in his place; but the natural conclusion would be, that those who were for the milder censure, if they had dared to face the shame that such a proceeding would have drawn down on them, would have resisted any punishment of the Author of the Libel on the House and the Managers; but that the force of the proceeding, when once stated to the House, had compelled them to suffer some censure to be passed on the Author, and that nevertheless they were determined to screen him from justice as much as possible. This, Mr. Wyndham said, was clearly their motive, or they never would stand between him and the mild measure that

had

Table for the farmer to oppress the people without the knowledge of the Pro-
vincial Boards : the oppressions must soon be made known to them ; and the far-

had been proposed ; for such, in his opinion, it was, since the magnitude of the offence would in his mind have fully justified expulsion ; and expulsion for such a crime, Mr. Wyndham contended, would have been the punishment adopted by their ancestors, had the offence been committed in their days. Mr. Wyndham further remarked on the enormity of the Libel, the aggravation of the offence in consequence of the author's being a Member of that House, and the necessity of the House's manifesting that they meant to support the Managers, unless they had real grounds to complain of their conduct ; and in that case the complaint ought to be made formally to the House, and the grounds of it stated. Towards the latter part of his speech, Mr. Wyndham grew rather warm, and argued with more vehemence than generally characterizes his mode of reasoning. Major Scott, it had been said, was entitled to be considered as the friend of Mr. Hastings, and not as his agent ; this the House had yet to learn ; but if it were so, he had still acted unwarrantably ; because, though a friend might warmly defend the cause of him for whom he professed a friendship, he was not entitled to abandon his defence and become an accuser and an assistant of his prosecutors. Mr. Wyndham said, for all the contradictions that he had mentioned, he should give his vote for the severer censure.

The Chancellor of the Exchequer observed, as he had not said any thing when he had moved the Amendment, he trusted he might be allowed to take some notice of the Hon. Gentleman's observations, which appeared to him to call for an answer, as much as any observations he had ever heard. The Hon. Gentleman had thought proper to confound the forbearance of an individual with the forbearance of that House, and to set up an argument that had not been used, in order to have the satisfaction of surmounting it. He had never stated, the Chancellor said, that the Managers, having long forbore to take notice of any Libel upon them, had thereby excused the author of the paper complained of to libel them again. What he had argued upon was, that the House had for years notoriously relaxed in their strict adherence to its privileges ; and by having suffered numberless Libels upon its proceedings to pass uncorrected, might have induced the Author of the paper complained of to imagine that he might, through the same channel, arraign the accusers of Mr. Hastings, and have him from the effect of a speech which had been stated in the news paper. There was, the Chancellor of the Exchequer said, a clear distinction between the two cases, and that distinction the Right Hon. Gentleman had confounded and lost sight of. With a peculiar degree of *ingenuity* also, had the Right Hon. Gentleman contended, that in the case of the Tobacco business, when his Right Hon. Friend [Mr. Dundas] had stated that certain Resolutions had been agreed to and published by the Tobacco and Snuff Manufacturers, and that one of those Resolutions was a personal Libel upon him ; that much might have been learnt from the discussion without do so, and that it was his Right Hon. Friend's duty to have attended to what he had mentioned. This, the Chancellor of the Exchequer said, was a curious circumstance, as the Resolutions to which his Right Hon. Friend had alluded, took place *after* the question of the repeal was decided, and not *before* it. The Right Hon. Gentleman, he observed, had said a great deal on the difference between the discussion of general political topics, and the discussion of judicial proceedings. In the latter case the Right Hon. Gentleman had contended, that no remark on the matter in issue, or the conduct of the Trial, ought to go out of the Court itself. Granted—upon certain general principles, viz. that nothing touching the proceeding ought to be printed or discussed out of Court, either one way or the other ; but would the Right Hon. Gentleman venture to maintain, that if liberties were taken repeatedly with the character of the party accused during the trial, and the matter of charge against him aggravated without doors, in conversation and in newspapers ; that an Hon. Gentleman (who, whether the friend or the agent of the party charged, had not, in his opinion, been very liberally treated in the course of the debate), who was in the habit of asserting his innocence (and every man was presumed innocent till he was legally pronounced guilty), might not be allowed to be reasonably grounded in his expectation, that it would be deemed no offence in him to answer in his friend's defence, through the same sort of medium that was used as the vehicle of his abuse ? The Right Hon. Gentleman, the Chancellor of the Exchequer said, had taken the liberty to assume as a fact what he had no right to assume, because it was utterly impossible for him to know whether the facts were founded or not. He had taken the liberty to assume, that those who were willing to vote for the milder punishment, would have stood between Major Scott and any censure, if the case had not been so strong, that they could not with any colour of decency attempt it. This, the Chancellor of the Exchequer said, was a very extraordinary assumption ; and he, for his own part, could assert, that it was unfounded as to himself. The Hon. Gentleman had gone

mer would soon find himself checked would speedily obtain redress. But and controuled, and the oppressed natives when the Provincial Boards were abo-

still farther, and had said, it was evident, that in voting for the milder censure, those who took that line meant to screen Major Scott from justice. He would not, the Chancellor of the Exchequer said, adopt any mode of reasoning so uncandid; but it would be equally fair, and equally liberal in him to say, that the Hon. Gentleman's pressing for the more severe censure originated in motives of spleen and cruelty. Having commented further upon Mr. Wyndham's speech, and declared that he was rather surprized at the sort of temper with which the Right Hon. Gentleman had delivered his sentiments on an occasion which, above all others, seemed to call for moderation and coolness, the Chancellor of the Exchequer sat down with affuring the House, that he had not intended to have troubled them any farther, had not what the Hon. Gentleman had said made it indispensably necessary.

Mr. Wyndham rose to explain. The Right Hon. Gentleman, he said, had observed upon his speech with some degree of triumph; but the triumph he could easily bear, since it was a triumph over the Right Hon. Gentleman's misrepresentation of what he had said, and not over his argument, such as it really was. Mr. Wyndham said, he could not be positive as to his words, but he could to his meaning: and sure he was, that he had never meant to say, that the Hon. Gentleman had trespassed on the forbearance of the Managers, and then made an argument of excuse of himself, for an additional Libel out of that forbearance; although, if he had said so, he conceived he should not have argued absurdly. In like manner, he had not said that it had been the duty of the Right Hon. Gentleman [Mr. Dundas] to have attended to the Resolutions of the Tobacco Manufacturers, as he might have learnt something from them; it was impossible that he could have said so, since the Resolutions passed subsequent to the decision of the question. What he had said was, that from the discussion of the topic of the Tobacco Manufacturers' case without doors, much was to have been learnt. Mr. Wyndham added some farther explanations in reply to that part of the Chancellor of the Exchequer's speech which referred to judicial proceedings.

Mr. Lambton shortly assigned his reasons for giving the preference to the severer censure.

Mr. Fox declared, that the principal reasons which had induced him to rise as soon as the Right Hon. Gentleman sat down, had ceased, in consequence of the very able reply of his Hon. Friend; who, though he had strictly confined himself to explanation, had contrived to give a complete refutation of the arguments of the Hon. Gentleman, who had complained of his Hon. Friend's want of temper, although he had perceived nothing like an indication of passion, or any sort of departure from that characteristic temper which peculiarly distinguished his Hon. Friend, viz. the being able to argue with more sedateness, and in a cooler and closer manner than perhaps any other Gentleman in that House. Perhaps, Mr. Fox said, the Right Hon. Gentleman had felt sore from not having been able to find an answer to what had fallen with so much ability from his Hon. Friend. Be that as it might, the Right Hon. Gentleman certainly had not been able to refute any one of his Hon. Friend's positions; and as the Right Hon. Gentleman could not meet his Hon. Friend's distinction between the use of free discussion in cases of a general political nature and the necessary sacredness of every thing relative to judicial proceedings, which his Hon. Friend had so clearly laid down, and which had so obviously made so strong an impression on the House, the Right Hon. Gentleman had endeavoured to elude it, by a general disquisition on the proper rule in regard to the conduct to be held respecting a trial on a criminal prosecution. Mr. Fox said, the calling Major Scott the *friend* of Mr. Hastings, was a prostitution of the name of friendship for the sake of serving a temporary purpose. He declared, no man valued the virtue of friendship more than he did, and possibly an agent might feel a friendship for his employer; but the friendship alledged in mitigation of a libel, made the libel worse; for, could it be an excuse to him, that an agent came to the House and said, in mitigation, that he had a friendship for his employer? With respect to the Motion, he declared, that if the amendment had been "That Major Scott be committed," and they on his side had been called upon to shew a precedent of a case of equal enormity, in which a Member had not been committed, he believed it would have scarcely been possible for them to have found one. As to being reprimanded at the Bar, there was a famous precedent in the year 1660, when Mr. Lenthall had been reprimanded at the Bar for holding a political opinion which he (Mr. Fox) had ever considered as a false and a diabolical one, viz. "That those who had first taken up arms against Charles the First, were as blameable as those who had been immediately concerned in his death." That opinion Mr. Lenthall had broached on his legs in the House, where the freedom of debate, and its being the duty of every Member to state his opinion on any subject under discussion, one should have imagined might have sanctioned the delivery of it; and yet

Mr.

lished, and only one General Board existed, and was held at Calcutta, many oppressions might be exercised upon the natives, unknown to the Board, and consequently unredressed. And if it was known that the farmer-

Mr. Lenthall was reprimanded at the Bar of the House. How much more then ought Major Scott to be reprimanded at the Bar, for one of the most deliberate, indecent, and atrocious Libels on the House and the Managers (and that inserted in a common news-paper) that ever was published? There were, Mr. Fox observed, but three species of punishment in cases of Breach of Privilege within the option of the House, viz. Reprimand, Commitment, and Expulsion. Of the first, which was the most mild and lenient, there were two sorts, the Reprimand of a Member at the Bar, and the Reprimand of a Member in his Place. Was it not fair to argue, that if the mildest of the two were insisted on in a flagrant and atrocious case, those who pressed for it would have prevented any punishment, if they decently could have done so, and that they were desirous of standing between the criminal and justice? Mr. Fox agreed with his Hon. Friend (Mr. Wyndham) that the offence merited expulsion. He added several other strong arguments in support of the Motion as originally moved.

The Master of the Rolls said, he could not after what had passed give a silent vote on the question; he declared, he should vote for the milder censure, not because he thought it an adequate punishment, for he thought it extremely light, but meaning that the Hon. Member who had been the subject of debate, and was to be the object of the censure, should feel that his punishment was a light one, not doubting but he would acknowledge that the House had dealt with him leniently, and would govern his future conduct accordingly. Sir Richard said, though he felt in this manner with regard to the censure, he was far from meaning to justify the conduct of the Hon. Member, which had undoubtedly been highly criminal, the Letter in question being clearly a Libel, and a Breach of the Privileges of the House. As the object, however, was to hold out a lesson for the future, and prevent a repetition of similar offences, rather than to do any thing degrading in its mode, and grating to the feelings of the Hon. Gentleman, that objection would be sufficiently answered by adopting the gentlest mode of reprimanding him. The Master of the Rolls declared, he was not one of those who held that the forbearance of the House in respect to other Libels was any justification of the present Libel; but he did think if they had a little more watched over all the publications respecting the Trial, the House would have done their duty better. Sir Richard said, a variety of circumstances considered, the Hon. Gentleman stood in a very particular predicament; and, though he could not then say it, he doubted not but that when the reprimand was given him, the Hon. Gentleman would declare, that he had been misled by the numberless publications of the speeches of the Managers, and of other matters relative to the Trial, which had been published in a manner highly reflecting on Mr. Hastings, and which had passed unnoticed and with impunity. He had himself seen, Sir Richard said, a speech or two of the Managers printed in a news-paper with comments, and therefore it was not to be wondered at, while such practices were winked at, that the Hon. Member should have conceived that it was warrantable for him to answer them, in order to defend Mr. Hastings from the impression that such publications might have made to his prejudice on the minds of the public. In choosing the mode of doing so, undoubtedly the Hon. Gentleman had acted exceedingly wrong, and extremely unbecoming a Member of that House; as he would learn from the Speaker, that a Member of that House was to state any ground of complaint that he might have against the conduct of the Managers, in the House upon his legs, and not, by resorting to a news-paper, to publish a Libel on proceedings carried on under the authority of the House. Sir Richard added several other observations, and concluded with repeating that he should vote for the milder censure, meaning to convince Major Scott, that the House had dealt with him leniently and indulgently, and not doubting but that he would thence be aware, that the next instance of Breach of Privilege of a similar nature that was taken notice of, the House would be under the necessity of exercising their justice with much greater severity.

Mr. Burke rose to clear himself from the imputation of having countenanced the publication of the Managers speeches (for he had conceived that the Master of the Rolls meant to impute it to him that they had appeared in the news-papers); Mr. Burke declared, in the most solemn manner, that he had neither directly nor indirectly lent his countenance to any such proceedings, and he believed he might safely take upon him to say as much on the part of the Managers in general. He declared, he had heard that such accounts of the speeches, and of what passed in the Hall, did appear from time to time in the news-papers; but he had not read them, he had merely referred occasionally to the short-hand writer's notes.

general (as was the case with Gunga with the Governor General, the op-
Govind Sing) was intimately connected pressed natives would be left forward

when he wanted to turn to any particular subject that had been discussed in the course of the Trial. With regard to the speeches of the Managers having appeared in the news-papers with comments, it was pretty obvious from whom such comments were most likely to come; and as to the news-papers having been open, if that could in one view be considered as a disadvantage to Mr. Hastings, it might in another be said that he had enjoyed his full advantage of the circumstance, since his connection with the press was notorious, and no one had suffered less than Mr. Hastings. Mr. Burke said, the first year both sides had preserved a becoming temperance; but in the year 1785 had passed in, as if a floodgate had been opened. In respect to the length of the Trial, that was not to be imputed to the Managers, as a matter for which they were to blame; since they had, at the first outset of the Trial, offered to decide immediately upon each Charge before they proceeded to establish and sustain any other. This they had done expressly in the case of the Banister charge; but it had been sent by Mr. Hastings, who had desired that the Managers might go through with the whole before he made his Defence; and that requisition the House of Lords had granted. This, Mr. Burke insisted, was a manifest advantage to Mr. Hastings; while at the same time it clearly proved, that nobody but Mr. Hastings himself was to blame for the delay. Mr. Burke added several other observations, and repeated several of his former arguments in support of the severer mode of censure.

The Master of the Rolls declared, that he neither had imputed it to the Right Hon. Gentleman, that he had countenanced any publication of the speeches of the Managers in the news papers, nor had he entertained the least idea that either that Right Hon. Gentleman, or any other of the Managers, had countenanced to do so. He had merely stated, that such publications had been made; that the tendency of several of them had been extremely prejudicial to the character of Mr. Hastings pending his trial; and, as they had passed with impunity, it might be supposed that they had misled the Hon. Member who had published the Libel now complained of, and had induced him to imagine that he might be warranted in replying through a similar channel.

The Chancellor of the Exchequer said, he knew not whether the Right Hon. Gentleman had intended to allude to him, but he begged leave to acquit him, that nothing that had fallen from him could have concerned any one part of the Right Hon. Gentleman's speech at all necessary. He declared that Right Hon. Gentleman that he was far from conceiving, much less from having meant to impute any improper conduct either to the Right Hon. Gentleman himself, or to either of the Managers.

Mr. Wiggley rose, and in a loud cry to *the question*, to make a few observations, declaring, that from the part he had taken that day, he felt it his duty to do so. Mr. Wiggley then remarked upon several arguments that had been used that day, and particularly by Mr. Burke. He reminded that Right Hon. Gentleman, that he had no right to charge Mr. Hastings as the author of the Libel, as to state Lord Scott as his agent; he reminded the Right Hon. Gentleman also, that although Mr. Hastings had been impeached by that House, the propriety of which measure he was far from meaning to call in question; and although Mr. Hastings was actually upon his trial, he had not yet been convicted; and it was the maxim of the law, that every man was to be held innocent, till he was found, after a full and fair trial, guilty. He said, not a word, therefore, why any Gentleman ought to be ashamed to call himself the friend of Mr. Hastings, or why any Gentleman was therefore to be called one of the gang, as the Right Hon. Gentleman had been pleased to call every Gentleman who avowed himself to be the friend of Mr. Hastings. But if there were any ground of censure in that circumstance, Mr. Wiggley said, he was free from it, since, though he had the honour of being known to Mr. Hastings, he could not be said to be in any particular habits of friendship with him. Mr. Wiggley made several other remarks, and declared, if there should be any division, he most certainly should vote for the amendment and the mild censure.

The question was then put, "That the words 'at the Bar of this House' stand part of the question;" which was negatived. It was next put, "That the words 'in his place' be inserted;" which was carried in the affirmative. The question was last put on the amended Motion, which was also carried without a division.

The Chancellor of the Exchequer, to render the proceeding complete, moved, "That John Scott, Esq. do attend in his place next day." Upon which the question was put and agreed to.

to state their grievances, left, by a fruitless attempt to procure redress, they should expose themselves to greater.

He was asked, Whether under the system of Provincial Boards, abolished by Mr. Hastings, the Members had ever found it necessary to have recourse to *torture*, for the purpose of enforcing the collection of the revenue? His answer was, NEVER.

The object which the Managers had view in examining to this point, was, to shew that neither *cruelty* nor *oppression* was thought necessary by the Boards of Revenue which Mr. Hastings had abolished, to enforce the collection; but that under the new system established by him in their rooms, the natives were exposed to, and had actually suffered *both*. In pursuing this object, the Managers met with much opposition from the Council for the prisoner, who contended that as *cruelty* was not in charge against Mr. Hastings, so no evidence of it could be admitted.

The Managers, on the contrary, maintained that *cruelty* was in charge, and that they consequently had a right to give proofs of it. The article entitled 'REVENUE' expressly charged Mr. Haf-

tings with having established a *system* for collecting the Revenue, the *necessary* consequence of which was cruelty to the natives: Mr. Hastings himself, in a Minute which he entered at a Consultation in the Supreme Council, admitted that the system of farming the Revenue or letting the lands for *one year*, would necessarily produce *oppression* to the natives; and yet he adopted the very system that he had condemned. Mr. Anstruther said, that when Mr. Hastings had in his Minute foretold *would* happen, the Managers were going to prove *had* actually happened.

Mr. Law, guessing that the Managers were going to give evidence of the savage cruelties committed by Deby Sing, asked whether this was really their intention?

Mr. Anstruther desired that the Minutes of a Consultation signed by Mr. Hastings should be read; but would not say for what purpose he produced this evidence; he was not bound to declare it; it was enough for him if he produced evidence that was relevant. If the learned Council for the defendant found it irrelevant, they would object to it.

FRIDAY, May 23.

The Order of the Day being read for the attendance of John Scott, Esq. in his place;

Mr. Reginald Pel-Clare, feeling it to be for the dignity of the House, upon a business like the present, to exclude strangers, moved the standing order of the House, "That strangers be excluded."

The House was immediately cleared, and no strangers permitted to be present during the remainder of the day.

After the strangers were withdrawn, and the resolutions of the House read,

The Speaker, according to the directions of the House, reprimanded the Hon. Member for the Letter written by him and inserted in the Times.

The following is a copy of the Reprimand passed on Major Scott:

"Mr. Scott,—The House have resolved, that you, being the author of a Letter which the House have declared to be a scandalous and libellous paper, reflecting on the honour and justice of this House, and on the conduct of the Managers appointed to manage the Impeachment now depending against Warren Hastings, Esq. are guilty of a violation of your duty as a Member of this House, and of a high breach of the Privilege of this House.

"On the nature and magnitude of your offence it is unnecessary for me to dwell: what ever has a tendency to depreciate the honour and justice of this House, particularly in the exercise of its inquisitorial functions, tends, in the same proportion, to weaken and degrade the energies and dignity of the British Constitution.

"The privileges of this House have a claim to the respect of every subject of this country. As a Member of this House, it is your duty, as it is a part of your trust, to support and protect them. Had a sense of these obligations produced its due influence on your mind and conduct, you would have avoided the displeasure of this House, and I should have been spared the pain of declaring to you the result of it. The moderation of the House is not, however, less manifest on this occasion, than their just sense of their own dignity, and of the importance of their own privileges. It is my duty, in addressing you, to be guided by the lenity which marks their proceedings; and, in the persuasion that the judgment of the House will operate as an effectual admonition to yourself and to others, I forbear to say more, than that the House have directed that I reprimand you for your said offence; and, in obedience to their commands, I do reprimand you accordingly."

After much altercation, the Consultation was ready, and then Mr. Anstruther was proceeding to go into evidence of the CRUELITIES exercised by Deby Sing on the wretched natives of *Dirachpore*; not, he said, for the purpose of bringing these cruelties home to Mr. Hastings personally, but for the purpose of shewing, that they arose from the system established by him, and from which system he himself had allowed OPPRESSIONS MUST NECESSARILY arise.

Mr. Law objected to the production of any evidence of cruelties which were not in charge. If those cruelties could be proved ever to have existed, he desired that the Managers would put them into the shape of a Charge, and he would be ready to meet them: but at present, as they were not charged, no evidence relating to them could be received.

Mr. Burke contended, that for all the ends for which the Managers wanted to prove acts of cruelty, the Commons had sufficiently charged them. The charge stated, that cruelty was a necessary consequence of the new system introduced by Mr. Hastings; and that cruelty could not have been practised under the old one which he had abolished.—The charge further stated, that Mr. Hastings himself was aware that oppression must necessarily arise from a system that should adopt the letting of lands for *one year*; and that, notwithstanding this is his own opinion, he had established the very system of which he knew OPPRESSION must be a NECESSARY consequence.

After some further argument on this subject, the Counsel persisting in their objection to the evidence required, and the Managers persisting in their requisition for the production of it, the Lords withdrew to the Chamber of Parliament to take into consideration the arguments on both sides.

In less than half an hour their Lordships returned to Westminster-hall, and here the Lord Chancellor informed the parties concerned, that the House had resolved—"That it was not competent to give evidence of the cruelties exercised by Deby Sing, the same not being charged in the Article then under consideration."

Mr. Burke said, that he must submit to their Lordships' decision, but he must say at the same time, that he had heard with the deepest concern; for if ever

there was a case in which the honour, the justice, and the character of a country were concerned, it was in that which related to the horrid cruelties and savage barbarities exercised by Deby Sing, under an authority derived from the British Government, upon the poor forlorn inhabitants of *Dirachpore*; cruelties and barbarities so frightfully and transcendently enormous and savage, that the bare mention of them had filled with horror every description of people in the country.

The impression that even the feeble representation which his slender abilities had been able to produce had made upon the hearts and feelings of all who had heard him, was not to be removed but by the evidence that should prove the whole a fabrication.—The horror which the detail of those cruelties had produced in the minds of all classes of people was indelible; the most dignified ladies of England had shuddered, and some had fainted at the bare recital; and was no evidence now to be received to prove the existence of those acts of barbarity which had shocked the whole nation?

Mr. Law said, it was not to be borne, that the Right Hon. Manager should thus proceed to argue in reprobation of their Lordships' judgments solemnly given.

Mr. Burke said, nothing could be farther from his intention than to reprobate any decision coming from a Court for which he entertained the highest respect. But he was not a little surprised to find, that the learned Counsel should stand forth the champion for their Lordships' honour:—they were themselves the best guardians of their own honour: and it never could be the intention of the Commons to fully, much less to call in question, the honour of the House of Peers. As their *co-ordinate* estate in the Legislature, the Commons were perhaps not less interested than their Lordships themselves in the preservation of the honour of that noble House; and therefore he never could think of arguing in *reprobation* of any of its decisions.

But the truth was, that the decision upon which he was then speaking was not upon a question put by the Commons: the Lords had no doubt decided properly; but it was certainly upon their own question, and not upon that of the Commons. If the Commons had been suffered to draw up their question themselves, they would have

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worded it in a very different manner, and called for the judgment of the House upon a question very differently stated from that on which the decision had just been given.

It was true, that the cruelties charged in the Article were not stated, *ex nomine*, to have been exercised by Deby Sing; but the Article charged Mr. Hastings with having established a system which he knew *would* be, and which in point of fact *had* actually been, attended with *cruelty and oppression*.—The Article did not state by whom the acts of cruelty had been committed, but it stated cruelty in general; and of such cruelty, so charged, the Managers had a right to give evidence.

He observed, that their Lordships must perceive a difference in the case thus stated, from that which they had stated themselves, and on which they had decided. He begged, therefore, that they would consider seriously what effect this decision would have upon this part of the Article, and upon the general character of the country.

If they were entirely to shut out all evidence of those acts of cruelty, what would the world say? what would be the opinion of mankind? It would astonish the surrounding nations, that the door should be shut upon the proof of cruelties, the bare recital of which had harrowed up the souls of all who had heard it. The character of the nation would suffer, the honour of their Lordships would be affected, if, when the Commons of England stood ready to prove the existence of barbarities that had disgraced the British name, and called for vengeance on the guilty heads of those who were in any degree instrumental in them, they should be stopped, and told that no evidence could be received in proof of those barbarities. A Noble Lord, deservedly high in the opinion of his Peers, had said, when he heard those savage cruelties detailed, that, compared with the *enormity* of them, all the Articles of the Impeachment weighed not a feather; that if the detail was founded in truth, no punishment could be too severe for whoever should be found to have had any part in exercising them.

The same Noble Lord, Mr. Burke observed, had said, that if the Hon. Manager did not make good this most horrid of all charges, he ought to pass for the most daring calumniator.

“Upon that issue, said Mr. Burke, “I am ready to put my character: suf-

fer me to go into the proofs of those unparalleled barbarities; and if I do not establish them to the full conviction of this House and of all mankind, if I do not prove their immediate and direct relation to, and connection with the system established by Mr. Hastings, then let me be branded as the boldest calumniator that ever dared to fix upon unspotted innocence the imputation of guilt.”

Earl Stanhope called Mr. Burke to order. His Lordship said, that the time of the House must not be wasted in arguments upon questions on which their Lordships had already decided.

Mr. Burke said, that it was his object to save the HONOUR and the CHARACTER of their Lordships, and not their TIME; and it could not have entered his head, that whilst he was pursuing so great an object, he could be supposed to be wasting their TIME, which, though certainly precious, could not weigh a feather against their HONOUR and CHARACTER.

However, let that be as it might, he had done: he had endeavoured to rescue the character and justice of his country from obloquy; if those who had formerly provoked enquiry, if those who had said that the savage barbarities which he had detailed had no other existence than that which they derived from the malicious fertility of his imagination, if those who had said that he was bound to make good what he had charged, and that he would deserve the most opprobrious names if he did not afford Mr. Hastings an opportunity of doing away the impression which every part of the nation had received from the picture of the savage cruelties exercised by Deby Sing; if, he repeated, they now shrunk from the enquiry for which they had before so loudly called, if they now called upon their Lordships to reject, and not listen to the proofs which they before had challenged him to bring, the fault was not with him; he had done his duty to his country, whose honour and justice had been outraged; to the House of Commons, who had sent him to their Lordships bar to express their abhorrence of cruelties, and to point the vengeance of the law against those who had been instrumental in practising them, and he had done what he owed to himself, in offering to prove all that he had advanced on the subject, on pain of being branded, if he should fail in his proofs, as a bold and infamous calu-

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iator.—“Upon the heads of others, therefore (said he), and not upon those of the Commons of Great Britain, let the charge fall, that the justice of the country was not to have its victim. The Commons have shewn their readiness to make good their charges—But the defendant shrinks from the proof, and insists that your Lordships ought not to receive it.”

Mr. Law, with unexampled warmth, whether real, or assumed in consequence of instructions in his brief, we cannot pretend to say, replied to Mr. Burke. He said, that the Right Hon. Manager felt bold, only because he knew the proof which he wanted to give *could not* be received;—that, from the manner in which the charge was worded, their Lordships *could not*, if they *would*, admit them, without violating the clearest rules and principles of law. “But (said he) let the Commons put the details of these shocking cruelties into the shape of a charge which *may* chance to meet, let them present them in that shape at your Lordships’ bar, and then we will be ready to meet every proof that can be adduced. And, if when they have done that, the Gentleman for whom I am now speaking does not falsify every act of cruelty that the Hon. Managers shall attempt to prove upon him, MAY THE HAND OF THIS HOUSE AND THE HAND OF GOD LIGHT UPON HIM!”

After this ejaculation, delivered in a tone of voice not unlike that of the theatre hero, when he exclaims, “Richard is hoarse with calling thee to battle!”—this part of the business ended.

Mr. Anstruther, adverting then to the THREE LACKS of rupees, or 30,000l. sterling, received by Mr. Hastings from *Rajah Nobkissen*, observed, that when Mr. Hastings was at last obliged to make a discovery to the Court of Directors of the receipt of this sum, he said, in his letter to the Court, that being in want of money for his own private concerns, and the state of the Company’s Treasury being so low that he could not pay himself his salary, he had procured a loan of three lacks, to answer his private wants; *that* being about the amount of what was due to him by the Company on the score of salary.

Mr. Anstruther said, he was going to prove that the whole of this account, except the receipt of the three lacks, was false. A clerk from the India-house was

accordingly called, who proved the various payments made to Mr. Hastings on account of his salary; from which it appeared, that at the time when Mr. Hastings pretended the sum of three lacks was due to him on account of salary, there was not a rupee due to him by the Company.

Here the business closed for this day, it being five o’clock, and their Lordships not chusing to go further into the evidence at that time. Adjourned.

SIXTY-FIFTH DAY.

THURSDAY, May 20.

Mr. Anstruther reminded the Court that Mr. Hastings, in answer to the charge brought against him for having taken a bribe from *Rajah Nobkissen*, of four lacks of rupees, had said, that his reason for having taken that sum was, that he wanted money on his own private account; that there was due to him by the Company for salary, &c. a considerable sum; but that the Company’s Treasury was so empty, that he could not pay himself what was due to him; and that *therefore* he had accepted, *but in the mean for the Company’s use*, the above sum from *Nobkissen*.

Mr. Anstruther observed, that on Tuesday last he had proved one part of this defence, viz. “That the Company was considerably in debt to him on the score of salary,” to be utterly destitute of foundation in truth.

On this day, he said, he would proceed to prove that the other part of the defence, viz. “That the Company’s Treasury was at that time so empty, that he could not pay himself what was due him,” was to the full as false and unfounded.

For this purpose a clerk belonging to the India-house was called, who proved that at the period to which the charge and defence referred, very considerable sums had been paid into the Company’s Treasury at Calcutta, for which Mr. Hastings had given bills on the Company in Europe; and also that on account of various loans opened by the Supreme Council at Calcutta, other sums to a very great amount had been paid into the Treasury there.—The inference from this evidence was obviously, that the Treasury, so far from being empty at the time, was, if not full, at least well stocked with ready money.

Mr. Anstruther desired next that a letter from Mr. Hastings to the Court

of Directors, dated the 5th of May 1781, might be read.

His object, he said, in producing this letter, was to shew that Mr. Hastings had grossly imposed upon his masters, the East India Company, with respect to the appointment of his new Committee of Revenue; that he had, through the whole course of his correspondence on this subject with the Court of Directors, pointed out the propriety of letting the lands, particularly in the extensive Zemindaries, to the ancient and respectable Zemindars of the country; but that, in defiance even of his own principles, he had actually let the lands not only to persons who were not Zemindars, but to persons of such characters as rendered them totally unfit for any place whatever in which humanity, justice, and integrity, were necessary.

Mr. Law objected to the production of this letter, as the opinions given by Mr. Hastings to the Court of Directors, which the letter was to prove he had not followed, were not in charge against him.

Mr. Anstruther maintained, that as the charge stated that Mr. Hastings had acted *corruptly* in abolishing the Provincial Boards, and substituting in their stead a General Committee of Revenue, the Managers were at liberty to give in evidence every circumstance which could prove *corrupt* motives for the measure.

Mr. Law insisted, that the bare stating that a thing, perhaps innocent in itself, had been done *corruptly*, could not, in point of law, let the prosecutors in to give evidence of what might have been, but what, in point of fact, was not in charge.

The Lord Chancellor observed, that if an act, in its nature *indifferent* or *harmless*, was stated as the ground of a *criminal* charge, the tacking of the word *corrupt* to it, could not open a door for the admission of evidence of facts not stated in the Charge.

Mr. Fox said, this observation went not to the particular matter now in dispute, but to the *whole* Charge; and he apprehended that this was not the stage of the business in which the learned Counsel should shew that the Charge would not sustain a judgment. Such a proceeding would be very proper in *arrest* of judgment; and then it would be time enough for him to shew that the Charge *would* sustain the judgment.

But even in the present stage of the

business he might undertake to prove, that though the word *corruptly* has not been inserted in the Charge, still the evidence offered by his fellow-Manager would be admissible.

For the *intention* was precisely what constituted the crime or guilt in every action; and whatever tended to ascertain the *intention* was legal evidence. The killing of a man was not *necessarily* a *criminal* act; and therefore every circumstance tending to shew with what *intention* the act was done, must necessarily be evidence, or one of these two consequences must ensue, either that an *innocent* man should be pronounced a *murderer*, or a *guilty* man escape the punishment of the law.

If a man was indicted for uttering a bill knowing it to be forged, surely no one would contend that all evidence of circumstances shewing that he had a knowledge of the forgery, must be shut out, unless those circumstances should happen to have been stated in the indictment.—Nothing could more satisfactorily prove the party's knowledge or the forgery, than his having given false and contradictory accounts of the transaction.

In the present case, Mr. Hastings was charged with having acted fraudulently and corruptly; and in his opinion nothing could so clearly support such a charge, as the evidence offered on this occasion, which would prove that he had given the Court of Directors a false account of the affair.

Mr. Burke said, the learned Lord had greatly misunderstood the case, or he would not call the act of abolishing the Provincial Boards of Revenue, and setting up a general Committee of Revenue, as set forth in the Charge, an act in its nature *indifferent* or *harmless*; for the Charge not only stated it to be corrupt, but also that it had been done *contrary to the orders of the Court of Directors*, and contrary to the injunction of an Act of Parliament, the 13th of the present King.

The Managers did not therefore rely merely upon the word *corruptly* which was in the Charge; but upon the plain and positive declaration clearly set forth in it, that the establishment of the general Committee of Revenue had been effected by Mr. Hastings in contempt of an Act of Parliament. He presumed that no one would venture to contend that an act involving in it the violation of an Act of Parliament might or could be in

its nature neutral, indifferent or harmless.

He insisted that the Commons were not bound to the rules of *special pleading*; and to attempt to bind them to such rules, would destroy the only security which the Nation had for the preservation of the Constitution.

At the Revolution, the people had taken no other security for that preservation, and for the pure and impartial administration of justice, than the responsibility of Ministers and Judges to the High Court of Parliament. An impeachment by the Commons was the mode of bringing them to justice, if the former should attempt any thing against the Constitution, or the latter should corruptly lend themselves to measures calculated to set aside the Government by law, or should attempt to pollute the source of public justice.

If in the pursuit of such criminals the Commons, who could have nothing in view but substantial justice, were to be stopped at every step by objections drawn from technical rules and forms of pleading, then would the greatest and most dangerous criminals escape the vengeance of offended justice; Parliamentary Impeachments, which were the principal, if not the only security for the preservation of the Constitution, would become nugatory and vain; and the most corrupt Ministers might, without check or controul, pursue the most anti constitutional career, unawed by responsibility, or an impeachment from which they could have nothing to fear.

Mr. Anstruther made a long and able *law* argument, in which he shewed, from the authority of the great Lords Hardwicke and Mansfield, that he was entitled to give in evidence, not only facts not stated in the charge, but even facts of a different nature.

He quoted two cases, one of which had been determined by Lord Hardwicke, when he was Chief Justice of the King's Bench; the other by Lord Mansfield, sitting afterwards in the same Court.

The former case was this:—Two men had been indicted on the *Black Act*—the indictment set forth, that they had their faces blacked; that they had concealed arms; and that, thus disguised and thus armed, they had appeared on the King's highway.

These facts were proved; and the Prosecutors having offered in evidence *their* facts not set forth in the indict-

ment, that great Judge suffered them to proceed, and to give evidence not only of *other* crimes of a different nature, which had *preceded* the apprehension of these men, but also other facts and crimes which had happened after they were in custody.

These other facts tended to shew *quo animo* these men had blacked their faces, had concealed arms under their clothes, and thus appeared on the King's highway. The prosecutors were permitted, for the purpose of shewing *quo animo* all this had been done, to give in evidence that a riotous meeting had taken place; that the prisoners had assisted at it; that the object of those who attended it was to pull down a turnpike; and that after the two prisoners were in custody, a turnpike had actually been pulled down. Lord Hardwicke had suffered all these circumstances to be given in evidence, though not one of them had been set forth in the indictment.

On that occasion Lord Hardwicke observed (Mr. Anstruther read his words), that when the prosecutors had proved that the prisoners had their faces blacked, that they had concealed arms, and that, so disguised and armed, they had appeared in the King's highway, they might have stopped there and called for a verdict and judgment on these facts; but they had gone farther, and shewn, that the purposes for which they had so disguised and armed themselves and sallied forth on the King's highway could not possibly be good.

The case tried before Lord Mansfield was an action brought against a man for having corrupted a great many electors, to induce them to vote for a particular candidate for a seat in Parliament. The declaration set forth, that the defendant had gone to a certain borough therein named, and had given to a great number of electors the sum of five guineas each, and that from each he had taken a note of hand for the like sum.

The defendant pleaded, that he had *bona fide* lent the money, that he had taken security for it, and that to corrupt the electors was by no means the object of the transaction.

To rebut this defence, evidence was offered of a conversation between the defendant and one Taylor; from which it appeared, that the former was not to insist upon the payment of the notes, which

which he had taken merely as a *blind*, and to give a colour to the whole transaction.

Though this conversation was not set forth or mentioned in the declaration, and though even the name of Taylor was not to be found in it, still Lord Mansfield suffered the Plaintiff to give it in evidence, for the purpose, as he said, of shewing *quo animo* the money was given, and *quo animo* it was taken. The Plaintiff obtained a verdict.

A motion was afterwards made for a new trial; Lord Mansfield refused to grant it; and the other three Judges of the Court concurred in opinion with his Lordship, that he was right in admitting the proof of this conversation.

Mr. Anstruther, having given these recent authorities, quoted many others of ancient date in support of his argument. He said, he had often heard that the most ancient impeachments were the best drawn up, and the best precedents to follow; for this purpose he had looked into the Rolls of Parliament and the Journals of the House of Lords, and he found that the oldest impeachments, so much praised, were infinitely more loose and vague than any article in the present impeachment.

He quoted many from the Reign of Edward III. down to the Revolution, which contained charges worded in a very general manner.

One of them was the Impeachment of Lord Latimer, who was charged with having exacted and taken large sums of money from *foultry persons in Brittany*, to the amount in the whole of 83,000*l.* Yet, general as this charge was, it was entertained by the House of Peers, and Lord Latimer was tried.

Mr. Law, without advancing any argument in support of his objection, adhered to it, and prayed the judgment of the House.

Upon this the Lords withdrew to their own House, and having put a question to the Judges on this objection, they adjourned the further proceedings in the Trial to TUESDAY*.

SIXTY-SIXTH DAY.

WEDNESDAY, JUNE 2.

This day the Court gave judgment on the following question:

“Whether the letter of the 13th of April 1781 can be given in evidence by the Managers for the Commons, to prove, that the letter of the 5th of May 1781, already given in evidence, relative to the abolition of the Provincial Council and the subsequent appointment of the Committee of the Revenue, was false in any other particular than that which is charged in the 7th Article of the Charges?”

The judgment of their Lordships was in favour of the negative of this question, and consequently against the Managers.

The day was passed almost without any argument between the Managers and the Counsel for Mr. Hastings, and merely in the reading of evidence, or examination of witnesses.

The Managers proved, that a notice had been served upon the Solicitor of Mr. Hastings, to produce the *caboulia* or agreement that passed between the latter and Kellaram and Cullen Sing, when he farmed to these two natives the districts so often mentioned in the course of the trial.

The Counsel for Mr. Hastings said, their Counsel was not in possession of the agreement in question, or he would produce it with great readiness.

Mr. Anstruther said, he would prove that Mr. Hastings had never transmitted to the Court of Directors the *caboulia*, or a copy of it. Mr. Hudson, of the India-House, was called for this purpose, who said, that he had not examined the Company's books for the specific purpose of finding whether this agreement had been transmitted or not; but that he was sure, nevertheless, that had it been to be found in his office, it could not have escaped his eye in a search which he had made for some other papers—he had not found any trace of this *caboulia*. There was another office, however, he said, in the India-House, where perhaps it might be found.

Mr. Anstruther examined Mr. Hudson next respecting the security which it had been suggested Mr. Hastings had taken from Kellaram and Cullen Sing when he farmed to them the Revenue. But the witness said, that he had not found in the Company's books any trace of a security given by them.

It was suggested by the Counsel for

* The Lords, however, afterwards on Wednesday May 26, upon motion, further adjourned the Trial to WEDNESDAY the 2d of June.

the defendant, that the security being made to the Governor-General himself, it was not in the course of practice, that it should be transmitted to Europe.

Mr. Ansluther observed, that it had never been heard before, that a security given for the use of the Company should be passed to the Governor-General, and not to the Company.

He informed their Lordships, that the union of the two offices of *Deewan* and *Farmer General* was injurious to the interest of the Company, and that it had never taken place but in the two Provinces in which he had already proved that Mr. Hastings had received money for his own private use.

These points were proved from various passages in the Company's books, which were read by the clerk.

Evidence was also given of the Present of 100,000*l.* made to Mr. Hastings by the Nabob of Oude; and of an offer of another Present of the same amount, made by the same to the same. It was also proved, that when the above Present, and the offer of another, were made, the Nabob was in the greatest pecuniary distress, and unable to pay his troops, or provide even the necessaries of life for his brothers and then mothers, the wives of his deceased father.

Mr. Wright, from the India-House, proved that Mr. Hastings had at various periods, from the year 1772 to the end of his administration, remitted to Europe, by bills on the Company, or *effects*, consigned to them, to the amount of TWO HUNDRED and THIRTY-FIVE THOUSAND pounds sterling.

Mr. Dallas asked him, Whether it was not a privilege allowed to the Governor-General to remit, by bills on the Company, money not his own, but the property of other persons?—Mr. Wright answered this question in the affirmative.—On being asked, To whom the bills were made payable? he said, most of them were to Sir Francis Syke, to two other gentlemen, or to Mr. Hastings himself; and in bills of this description, payable to these three persons, or to himself, 216,000*l.* had been remitted by Mr. Hastings.—The remaining 19,000*l.* which would make the gross sum of 235,000*l.* had been remitted either in diamonds or bills not made payable to himself.

Mr. Wright, on being desired by Mr. Ansluther to state the net amount of revenue paid into the Company's treasury of Bengal, in the four years pre-

ceding the abolition of the Provincial Boards of Revenue, and the four years subsequent to that event, read several accounts taken by him from the Company's books, from which it appeared that the net revenue paid during the second period was less by fifteen lacs of rupes, or near 100,000*l.* than during the existence of the Provincial Boards of Revenue; and that the collection had during the second period, cost the Company fifty five lacs, or 550,000*l.* more than it had cost during the preceding period.

The Counsel for the defendant desired that he would state the gross as well as the net produce of the revenue during both periods, and also asked, Whether the salaries or pensions allowed to the Members of the suppressed Provincial Boards were not included in the increased expence that had attended the collection?

Mr. Ansluther said, he was willing to admit both of these points, namely, that the gross produce of the revenue had been greater during the second than during the first period; and part of the increased expence of collection had been occasioned by the salaries allowed to the Members of the suppressed Boards: not only he admitted these points, but he made them grounds of charge against Mr. Hastings—for he charged him with having adopted a system which, whilst it took a vast deal more money out of the pockets of the people, had diminished the receipts at the Company's treasury. He charged him with having not only diminished the revenue fifteen lacs, but with having increased the expence of collection full fifty five lacs. The suppression of the Provincial Boards, which had been the grand cause of this decrease of revenue and increase of expenditure, was in charge against Mr. Hastings; and therefore his Counsel could not defend him, by saying that part of the increase must be ascribed to salaries continued to the Members of the suppressed Boards; for if the suppression, which the Managers contended was a crime, had never taken place, there would not have been any ground for paying those salaries to persons who were deprived of the means of earning them.

The next witness produced was Mr. Shore, who had been near twenty years in India, and was a Member both of one of the Provincial Councils, and of the Revenue Committee, and who

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gave a very full, clear and distinct evidence.

Mr. Burke first examined him as to a paper that he had given Mr. Macpherson in 1781, in which he stated his objection to the plan formed for Mr. Hastings in that year.

Upon his cross-examination, Mr. Shore said, that he had often changed his opinion upon revenue matters, and had recorded as much when last in India; that he was convinced the Natives of Bengal were happier, and their property better protected under the English Government, than under any of their former Nabobs: That his objection to a Dewan to the Committee of Revenue, was to a Dewan generally, not particularly pointed at *Gunga Govind Sing*, of whom he thought as favourable as other Natives; but that he thought no Native was fit for such an office: That he had condemned the system of Provincial Councils, as fundamentally wrong, and inapplicable to any good purpose: That he had stated, that the same objections which lay against the Committee of Revenue, lay also against the Provincial Councils, their incapacity to exercise a local control: That he had a very bad opinion of *Kamshanda Sing* who had succeeded *Gunga Govind Sing* (on the recommendation of Mr. Francis): That he went out in 1769, returned to England in the same ship with Mr. Hastings in 1785, and arrived in Calcutta a Member of the Supreme Council in 1786; that the charges against Mr. Hastings were very publicly known in Bengal; that no complaints had been made against Mr. Hastings while he was in Bengal; and that the Natives thought very favourably of the character of Mr. Hastings.

There were many other questions put to Mr. Shore, which he answered with the utmost cleanness; but these are amongst the most material ones.

Mr. Burke then asked him a few further questions—By the answers it appeared, that he fetched the Revenues of two Provinces himself, Dacca and Patna—That he took with him as his executive native officer, *Praon Kyen*, the son of *Gunga Govind Sing*: That Mr. Hastings did not recommend it to him to take this person, but that Mr. Shore himself selected him, acquainted Mr. Hastings he had to do so, who approved of it;—that there was this material difference between the system as now established, and that which he noticed in the remarks he gave to Mr. Macpherson in 1781—Collectors are

now appointed to all the Districts—and the Board of Revenue in Calcutta is a Committee of Council.

In answer to further questions from Mr. Dallas, Mr. Shore stated, that the system of 1781 was not calculated to throw the whole power into the hands of Mr. Hastings; nor was it calculated to keep the Members of the Supreme Council in ignorance of the state of the Revenues—(two of the allegations in the Articles). Mr. Shore also stated, that when Mr. Hastings appointed him a Member of the Committee of Revenue in 1781, he was not in habits of intimacy with him, nor in any degree connected with him. In answer to questions put by Mr. Burke, it appeared that Mr. Shore had since been intimate with Mr. Hastings; and that he gave, but whether to Mr. Hastings or some other persons did not appear, some remarks upon the Revenue Charges; a very small part of which, he believed, appeared in Mr. Hastings's Answer to that Charge.

In reply to some very pertinent questions from Lord Stormont, Mr. Shore stated, that he had no objection personally to *Gunga Govind Sing*, but generally to any Native having the power which a Dewan had, as he thought every Native would use it, as *Gunga Govind Sing*, he believed, did, for his own advantage;—that his zeal and attention were not so great as he wished.

The accuracy, propriety, and fineness with which this Gentleman answered every interrogatory, impressing the whole Court, and operating to little to the purpose of the Managers, the following question was asked by way of re-examination.

Is the Witness in intimate friendship and connexion with Mr. Hastings?

It was instantly answered, "I certainly consider myself on familiar terms with him."

The Counsel, unwilling to suffer any imputation to be made by this strange intimation, put the following question: "Were Mr. Hastings the corrupt and cruel man described in these Charges, would you continue on such terms with him?"

The Witness answered emphatically, "I should hope not."

He was next asked, Whether he had helped to draw up the Defence of Mr. Hastings?—He said, he had furnished him with Memorandums relative to the Revenue Charge; but that very little of what he had furnished had been used, or was to be found in the Defence.

Mr. Fox here informed their Lord-

ships, that the Managers had closed their evidence upon this charge, and that he would do himself the honour, the next day their Lordships should sit, of summing up the evidence that had been given upon it.

Here Mr. Law said, that there was a foreign Gentleman (Col. POTIER) who had been attending these two years, under their Lordships' order, to give evidence on this trial; that his evidence was very material to Mr. Hastings; and that, on the one hand, this Gentleman might not be obliged to continue for an indefinite term this attendance; and on the other, that Mr. Hastings might not lose the benefit of his evidence, he would be much obliged to the Hon. Managers, if they would suffer him in this stage of the business to examine this Gentleman on some points relative to the Benares Article, and to the Article of Misdemeanors in Oude.

Mr. Fox replied, that at the outset of the Impeachment, a proposition was made by the Managers, namely, that each article should be considered as a separate trial, that evidence for and against the defendant should be given upon it, and that the judgment of the House should be taken, before another Article was opened. This proposition the Counsel for Mr. Hastings had thought proper to resist: if, therefore they at present felt an inconvenience from a mode of proceeding that had been laid down by themselves, they, and not the Managers, were to blame. At the same time he believed no inconvenience did exist, and he would be ready to concur in any proper measure for removing it.

Having said this, Mr. Fox begged leave for the Managers to withdraw to consult awhile on this point. They accordingly withdrew, and in a few minutes returned into Court.

Mr. Fox then informed their Lordships, that the Managers would not object to the examination of the Gentleman in question, it being understood that he should for the present be examined to those Articles only which the Managers had opened.

It was after this privately agreed between the Counsel and the Managers, that Col. POTIER, who was a Colonel in the Company's service, should be called after Mr. Fox should have summed up the evidence on the present Charge.

The Court adjourned at half past five o'clock.

SIXTY-SEVENTH DAY.

MONDAY, June 7.

THE Hall was as much crowded this Day as it had been through the whole of this important trial. Public curiosity was wound up to a higher pitch than on any former day, and every part of the Hall was crowded to overflowing.

Two witnesses were examined, and the whole of the evidence concluded on the Charge, which has occupied the attention of the High Court for these two Sessions.

Mr. Fox then rose to sum up the evidence. He addressed the High Court in a short preface, in which he stated the task which had fallen to him that day. It was an arduous and a difficult task. If he were to compare himself with orators of former times, he would justly be charged with arrogance and vanity. Some of these orators, in addressing the tribunals before which they had to plead, had said, that if their Judges would manifest their justice and integrity, they trusted to their own powers for securing their attention. Cicero had, in this confidence of his ability, called only for the justice and integrity of the Judges.—“I bespeak not (said he) your indulgence.”—*Ut me attente audiat, id ipse efficiam.* Unlike the Roman Orator, he solicited the indulgence of the noble Lords, sensible that if he could only gain their attention, he might confidently trust his cause to their justice and integrity.—It was his peculiar disadvantage to follow others, who had to develop the high criminal acts of Mr. Hastings, acts which were of themselves sufficient to excite the indignation of the Court, and which gave scope to the loftiest eloquence. They had the grand and conspicuous effects of Mr. Hastings's system to display. He had to trace the intricate springs and causes; and it was in this, as in many of the operations of nature, where great effects, which drew the attention of every eye, were frequently derived from causes comparatively small, remote, and opposite. He had to trace the small secret springs of the voluminous mischiefs of Mr. Hastings's government; not to agitate their Lordships by pictures of Kings dethroned, and provinces laid waste; but to demonstrate the spirit of speculation, bribery, and corruption with which the prisoner was actuated, and which led him to the commission of all his bolder crimes.

The Charge on which their Lordships had been engaged for the two last Sessions in hearing evidence, comprehended the whole of the 6th, part of the 7th, and all the

the 14th Charge, as originally presented to their Lordships. In summing up the evidence which had been given, he would confine himself strictly to what immediately and directly applied to the prisoner as laid in the Charges; and he should be careful to introduce nothing that was not fully and clearly substantiated by proof. The subject naturally divided itself into two parts; and, for the sake of perspicuity, he should pursue it in the manner in which it had been brought before their Lordships. The natural division was, first, the Presents received by Mr. Hastings before the Act of the 13th of his present Majesty; and, secondly, the Presents which he had received subsequently to the passing of that law. The first comprehended the evidence they had heard in the course of the last Session. The second, together with the corrupt administration of the Revenues, was contained in the evidence adduced in the course of this Session.

Following this course, Mr. Fox said, the first evidence that had been brought, was from the letters and example of Lord Clive, who gave a clear and distinct account of the corruptions then practised in India, and particularly of the custom with regard to Presents. Lord Clive took an oath solemnly binding himself not to take any Presents whatever.—Mr. Verelst and Mr. Crozier did the same thing, and that in strict and literal compliance with the instructions of the Court of Directors.—It did not appear by the Minutes, whether Mr. Hastings had taken this oath or not, and it was a fact upon which therefore he did not mean to ground any argument.—The prisoner would assume the part which favoured his cause the most. Either he did or he did not take the oath of his predecessors.—If he did not take the oath, it was a presumption against him, for he well knew that it was the express injunction of the Directors that he should take such oath. If he did take the oath, the criminality proved against him was the greater, as he had violated that oath, and had actually accepted of presents. Let him, however, plead whichever of the two things he pleased, the guilt of accepting Presents anterior to the act of 1773 was manifest; for he was well acquainted with the order of the Court of Directors, and the guilt was greater, because at that time a general reform was introduced into all the Establishments of India, and he was entrusted to reform the abuses, of which this was stated to be one.

This premised, Mr. Fox said it was his duty to shew from the evidence, that Mr.

Hastings had received Presents, in direct violation of his orders and his duty. There were two ways in which facts might be proved.—First, By the confession of the party, or the testimony of sight.—Secondly, By circumstantial evidence or tacit acquiescence of the party.—The latter might be so strong as to command belief from the stubborn hearer; and he thought he might venture to say, that such was the nature of the evidence on the charges brought against Mr. Hastings. There were two allegations in the sixth Charge.—First, Of a lack and a half of rupees corruptly received from the Munny Begum.—And, Secondly, Of the corrupt appointment of Munny Begum to the superintendence and guardianship of the infant Nabob of Bengal. The proof of these two facts contained as strong a chain of circumstantial evidence as ever was adduced.

In the Consultation of the 11th of March 1775, Mr. Francis, then a Member of the Supreme Council, presented a letter from Nunducumar, expressly charging Mr. Hastings with the corrupt receipt of this lack and a half, and offering to prove it. What was the conduct of Mr. Hastings on this direct charge? He did not take the course of a man conscious of innocence, and anxious for acquittal. He did not deny it. Instead of meeting his accuser openly and boldly, he contented himself with making a Minute, in which he said, that Mr. Francis had brought forward a charge which he did not know to be well founded and had consequently run the hazard of bringing a libel on a Member of the Board. Mr. Fox reasoned on this with great acuteness. He said, it was not the conduct of an innocent man. If he knew himself to be guiltless, he would not have stopped with the qualified imputation on Mr. Francis of the hazard of bringing a libel; he would have known, and said, that it was a libel hypothetically; he would have called for enquiry, and would have been confronted with his accuser. Instead of this, when it was proposed that Mr. Goring, a gentleman whose name stands as high as that of any person who ever came from India, should be deputed to enquire into the truth of this charge, he objected to the appointment; not from any thing which he had to alledge against Mr. Goring, but on a ground unheard of, and unaccountable,—because it was unnecessary. What! when a direct charge of corruption was brought against him—when his accuser, who was formerly his instrument, stood boldly forward, and offered to substantiate the charge, could he refuse to depute a Gentleman

Gentleman to inquire into the matter, *because it was unnecessary*? It was a new use of the term *unnecessary*; and he left it to the feelings of every noble Lord present, whether, to attacked,—so confronted,—they would consider it as consistent either with the duty or their honour, to say, that an enquiry would be unnecessary. Mr. Goings, was, however, attempted,—and then Mr. Hastings desired that a set of questions should be given to him to ask the Begum. Perhaps a more extraordinary mode of defence was never taken up. He did not desire him to ask whether the money was paid to him or not—but to ask him why it was given—for what purpose—and why this particular sum had been selected out of all the sums that had been received. Here was a complete admission on the part of Mr. Hastings of the receipt of the money. He did not attempt to deny it. He was eager only to justify his acceptance of it. Mr. Fox criticised the whole of Mr. Hastings's conduct on this part, with his usual acute reasoning, and said, that it was as clear that he had acknowledged the receipt of the money, though tacitly, as if it had been proved by witnesses who were present. In the contentions with the Council, whom Mr. Hastings called his enemies, he never denied the acceptance of this bribe. He declared, in the preamble to a Minute, that he would reply to a Minute of General Clavering, article by article. The manner in which he did reply was truly curious. It was literally as follows: This article deserves no reply—That article requires no reply—This article merits no reply—And so on, to seven or eight of the principal articles in the Minute, did he reiterate and change the phrases of deserve, require, and merit no reply. He asked of their Lordships, whether they thought this was the conduct of an innocent man? He, perhaps, thought he could defy the justice of his country—and, *si se omnia dixisset*—perhaps so he might; but, fortunately, he had spoken out, and testimonies of his guilt had been successfully drawn from his own endeavours of extenuation. From the charge of the murder of Nunducumar he had thought fit to purge himself by oath. His very doing so was an argument of his guilt in the Charges now brought against him—"You may accuse me (says he) of speculation—that deserves no reply—Of bribery—that requires none—Of corruption—that merits none—But when you charge me with murder—that is a crime, and I will prove that I am not guilty, for I will take an oath that I am innocent."—"Now (said Mr. Fox), though

I am certainly ready to acknowledge that the murder of Nunducumar was a crime infinitely more atrocious than the crimes of speculation and bribery (and I speak of the murder of that man without reference to the opinion of others), yet surely his total silence under the accusation of the corrupt acceptance of this bribe, when he was thus eager to acquit himself from other charges, is a strong presumption of his guilt in that particular. As if all these were not sufficient (continued Mr. Fox), we find, in the letter which he wrote to the Court of Directors from Cheltenham, not one syllable in denial of the fact and a half corruptly said to be received from the Begum. In that letter we have various denials—we have apologies heaped together—but he carefully avoids all denial of money received from the Begum."

Mr. Fox then came to his corrupt appointment of the Begum to the office of guardian to the infant Nabob, in express contradiction to the orders of the Court of Directors, and which clearly and manifestly was the return which he had to make for the bribe received. He detailed the orders of the Court of Directors—the scheme of reduction recommended by them—the persons which they described as proper to be put into that trust—and, in direct disobedience of all this, he put this woman, together with two others, instruments of his, into the administration of the household of the Nabob. Were he, he said, to stop here, he might fairly say that he had not only proved the corrupt acceptance of the bribe, but the abuse which he had committed in consequence of it. There were circumstances of aggravation, however, still behind. The Court of Directors had directly ordered, that the sum set apart for the disbursements of the Nabob should be reduced from 31 lacks a year, to 16 lacks. This reduction was ordered in 1771. In a letter written to the Court of Directors in the year 1775, he takes credit to himself for the promptitude and alacrity with which, in this instance, he obeyed the orders of the Court of Directors. "I might (says he) have advanced plausible pleas for protracting the reduction of the establishment till 1772." He exulted on the cheerfulness with which he did his duty; and made it a boast, that if he had delayed the reduction, considerable sums of money, by way of Present, would have been in his offer. What would their Lordships say, when they coupled this letter with what he actually did do—protract the reduction till the year 1773? If he could, according to his own account, have received bribes for postponing

postponing it only till 1772, what must he not have received for postponing it till 1773? How he could come to write this letter in the year 1775, can only be accounted for by that fatality in which his crimes had involved him—when memory was not able to keep pace with the enormities which he had to extenuate. But two months after he had written this letter, thus speaking of his prompt obedience (by what evil Genius directed he pretended not to divine), he stated an account of the Nabob's disbursements for 27 months down to the end of 1772, at the rate of 31 lacks a-year; so that what he disclaimed doing was actually done; or an imposition was practised on the Company, and 15 lacs, or 150,000l. was sunk upon them, and put into the pocket of Mr. Hastings, or of the Munny Begum.

Mr. Fox detailed all the expedients that were afterwards used to do away the effect of this very untoward contradiction, every one of which had recurred on himself, and involved him in increase of shame. It was ordered, that there should be an account kept of the disbursements of the Nabob, and this account was called for. Mr. Hastings apologized, by saying that he had omitted to order it. And thus, by not complying with the instructions that were given, he obtained a sort of cover for the frauds he had practised in that establishment. He said in one of his letters, that 1500 persons were cut off from pensions which they had from the Nabob. This was done to bring the expences within the establishment, and this was done too a twelvemonth before the reduction of salary took place. But did it appear that the efficacy of this reform was felt? These pensions were cut off to enable the Begum to give to Mr. Hastings the bribes on which they had agreed. Ever after, he shewed the most marked attention to the Begum, and supported her against the direct orders of the Company. In 1783, he writes a letter in her favour;—says, that she is persecuted on account of her supposed gratitude to him;—and then, he does not deny the sums that he received from her. He re-appointed her after she was displaced by the Board, and though, according to his own account, she possessed none of the qualities of mind required by the Court of Directors in the fit person to be appointed to the office which she filled. Mr. Fox shewed too, from Mr. Hastings's own confession, that he clearly understood the orders of the Court of Directors in the same way in which he [Mr. Fox] understood them;

PART III.

and yet, with this perfect knowledge of his duty, he had persisted in supporting this Munny Begum, whom he described as a poor, weak, and silly woman, in the guardianship of the Nabob, in the room of the Bow Begum his natural mother.

Mr. Fox said, he had confined himself in this part of the subject strictly to the lack and a half; determined as he was not to aggravate the guilt of the defendant, nor even to bring forward any of the charges that were not in his mind clearly and incontrovertibly proved. It was in this instance clearly proved, by the tacit acquiescence of Mr. Hastings, and by a long unbroken chain of circumstantial evidence, that he had corruptly received from the Munny Begum a lack and a half, or 15,000l.; and that in consequence of this bribe he had disobeyed the orders of the Court of Directors in appointing her to an office for which she was not qualified, and in supporting her in abuses, re-appointing her when removed, and delaying the reduction of the establishment when expressly ordered by his employers.

He came next to speak of the Presents received by Mr. Hastings subsequent to the Act of 1773, which expressly prohibited the Company's servants from receiving Presents from the natives on any pretence whatever. The meaning of this law was clear; and although the maxim *ignorantia legis neminem excusat* was clear, yet, feeling that the strict application of it in all cases might be harsh, he was happy to find that it had been always construed, both by the Directors and their servants, as he thought it ought to be construed. It had indeed been stated, that, according to the manners of India, an interior never approached a superior without a Present; and therefore it might reasonably be doubted, how far it was consistent with sound policy to adhere in all cases to the literal meaning of the Act. On that point fortunately there was a decision. When General Clavering, Colonel Monson, and Mr. Francis, arrived in India, men to whose great abilities and inflexible integrity India was perhaps indebted for whatever of good government it now enjoyed, the question was agitated in the Council. They were decidedly against accepting Presents on any pretence. Mr. Buxill thought such as were offered in conformity to the custom of the country too inconsiderable to be refused at the hazard of offending or alarming those by whom they were offered. Mr. Hastings took a middle course, and said, they might be received, provided they were applied to the use of

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of the Presents charged in the Sixth Article; because it was a transaction which, though not exactly of a similar nature, tended to throw light on the subject of those Presents. In February 1782 a present of ten lacks of rupees had been offered to Mr. Hastings by the Vizier, through the agency of Mr. Middleton. The proof of this offer was found in Mr. Hastings's instructions to Major Fanning, which did not appear on the Minutes of the Supreme Council till October 1783. The production of those instructions at the Council Board was the first intimation given to his colleagues of such an offer having been made; and, among other reasons for declining the Present, he said, his acceptance of it at that particular period might appear to proceed from an interested motive; but, lest the Vizier should consider the refusal as a mark of displeasure, added, that he would accept the Present for the use of the Company with as much thankfulness as if given to himself. The Managers meant to contend, that the offer having been so long made before it was publicly refused, lest a bad impression on the minds of Middleton and other servants of the Company, who knew that it had been made; and the mode of rejecting it, a bad impression on the mind of the Vizier. The delay of the refusal let the Company's servants as examples of considering the rejection of a Present not as a point of obedience to an Act of Parliament and the orders of the Directors; for, among all his reasons for declining it, that was never mentioned, but as a matter of policy and choice. And the mode of refusing, without reference to the law, produced a similar effect on the mind of the Vizier, to whom it would have been very useful and important information, that the Company's servants were expressly restricted from accepting any Present whatever. At the time of the treaty of Chunar, when the Vizier's affairs were greatly distressed, he did accept a Present of ten lacks. Why reject a second on the plea of disinterestedness? Was it a proof of disinterestedness, to take one Present, when the person from whom it was taken was in want of money, in necessity so urgent, as to be set up for a defence of the most unjustifiable expedients; and to refuse another, when that necessity no longer existed? The apprehension expressed, that the Vizier might consider the refusal as a mark of displeasure, was a strong presumption that Mr. Hastings was in the habit of taking Presents from him. His conduct respecting all the other Pre-

sents was consistent in this, that he never communicated them to his colleagues in India, and afterwards boasted of informing the Directors. In his letter from Cheltenham, he said, that he could not communicate them to his colleagues in Council, for fear of incurring the imputation of 'courting favour by an ostentation which he disclaimed. Why did not the same reason operate with regard to this, which he did not communicate to his colleagues, and never to the Directors at all, as far as appeared? His conduct respecting the other Presents was—first to take the money, then to apply, or pretend to apply it to the use of the Company, taking bonds for it to himself, and finally to conceal, confound, and perplex the names, sums, and dates, as the means most likely to elude enquiry and defeat investigation. Here, on the contrary, his language was—"Give not the money to me, give it to the Company;" a better course, to be sure, had it been followed in every other instance. So much to shew the bad example and the inconsistency of his conduct in this transaction.

About August 1782 he appeared to be much displeased with Mess. Middleton and Johnson, and ordered them both under a guard to Calcutta. Johnson he brought to trial on certain specific charges, of which, advising the Vizier not to transfer to the Company the ten lacks offered to Mr. Hastings, was one. Mr. Johnson admitted the fact, and justified it by saying, that the assets in his hands being intended to pay the old debt due by the Vizier to the Company, he would not allow any new claim to be brought against them, knowing they were all the Vizier could command. Mr. Hastings asserted, in reply, that the ten lacks was no new claim, and that he believed assets to provide for it had passed through Mr. Middleton's hands to Mr. Johnson; as, however, the old debt was not all provided for, he was not sorry that the ten lacks had not been added to it. Thus it appeared that a Present, the legality of which was at all times more than doubtful, had been accepted at a time when it might have distressed the Vizier, and could not benefit the Company. This trial Mr. Hastings concluded in a manner in which he could not but with his own might conclude. After bringing Mr. Johnson to Calcutta under a guard with fixed bayonets, after exhibiting a charge against him as above, he stops short in the very beginning of the enquiry, and acquits him; although, at the same

same time, he professes to be morally certain that Mr. Johnson had assets in his hands to the amount of the ten lacs; although he afterwards insists on the same thing in his remarks on Mr. Middleton's defence; and no account of the money, whether received or not, was ever produced by Mr. Johnson or any other person. This, although adduced only as a medium of proof, might have been charged as a high misdemeanor against Mr. Hastings; that he, as Governor General, whose duty it was to superintend the conduct of the inferior officers, believing such a charge to be true, dismissed it without enquiry; that he never examined Mr. Middleton, who was then at Calcutta, and could have proved the charge, if true; and that he had in his possession a letter from the Vizier, which stated that the ten lacs had been demanded as a *debt due to the Company*, which he did not produce, and which appeared among the official papers till Mr. Hastings left India, but was now in evidence on their Lordships' table. In this letter the Vizier, with great humility, represented that he was *offended* and *confounded* to find himself so harassed and distressed, considering that Mr. Hastings was his *friend*. Well might he be so, when he had purchased his friendship with a bribe of 100,000*l.* and the offer of another to the same amount! After all, it did not appear that the Vizier had been dissuaded by any person from persisting in the offer he had made. He did persist in it; so that the charge against Mr. Johnson was as false, in fact, as his acquittal was *candid*. He was not only acquitted, but soon after appointed to an office of great trust and emolument, by the person who was morally certain of his guilt. Such excesses of candour could only be accounted for, by supposing that Johnson had actually got the money, that the charge against him was merely an expedient to obtain prompt payment; and that, a settlement having taken place to the satisfaction of Mr. Hastings, the inquiry was immediately dropped. Such conduct as he had stated was utterly inexplicable, but on the supposition of a sinister understanding between the accuser and the accused.

On those grounds the criminality of the transaction was apparent. Much might be added in aggravation, of which he should notice only one or two points. Mr. Middleton's letter, containing the offer of the Present, was never produced at all; and it was almost certain that Mr. Hastings received the offer of the second Present before he wrote his letter to the Directors,

giving notice of the first. When he felt himself in so communicative a state of mind, that he professed to give an account not only of that Present, but of every other present he had received, one would have thought that he might have also mentioned the troubling circumstance of a new Present being offered. He felt no shame, as he had before stated, in not being able to develop the motives of a mind studiously intricate and mysterious; but he believed that Mr. Hastings meant to confound the two Presents, in order to keep both, if possible; or, at least, the one under cover of the other. One character ran through all his transactions respecting money; and, as Cicero said of Pompey, *nihil simplex, nihil apertum, nihil bonestum*—there was nothing clear, nothing open, nothing honourable in his conduct.

Mr. Fox came next to the allegations of the Seventh Article, respecting the mal-administration of the Revenue. The administration of the Revenue was closely connected with the Presents, many of which were not received from Princes and men of his rank, but from collectors and farmers of land. Their Lordships had not forgotten the names of Crofts and Anderson, and of that great and illustrious name, Gunga Govind Sing, which almost always appeared when Mr. Hastings received money. The charges on this head were, the institution of the Aumens, and the abolition of the Provincial Councils.

It was in evidence, that the Court of Directors considered the Governor-general and Council as invested with full power over the Revenue by the Act of 1773; and that they were not to give that power out of their own hands. It was in evidence that Mr. Hastings understood the Act in the same manner; and that, when it suited his purposes, he did in 1776 delegate that power by appointing Aumens, with authority independent of the Council, to enquire into the value of the lands, to call for records and documents, and to compel their production by corporal punishment and torture. Who were the depositaries of this extraordinary commission? Mr. Anderson and Gunga Govind Sing—Gunga Govind Sing, who had been dismissed from the office of Dewan to the Calcutta Committee, on proof and confession of a considerable delinquency, the instrument of receiving money for Mr. Hastings. This stigmatized delinquent, this notorious bribe-broker, he thought fit to employ as inquisitor-general into the property, with power over the person of every

every native. Such an appointment was in itself an act of delinquency, on which he might boldly call for judgment. And, to take away all pretence that it was an error in judgment, a declaration of Mr. Hastings was in evidence, that the value of the lands was ascertained, and that the appointment of Aumeens was useless and nugatory. Was it then possible to suppose that it could have been made but for corrupt purposes? Could a measure so unprecedented, so arbitrary, so oppressive, be justified upon any ground but that of the most cogent necessity? Was necessity the plea of Mr. Hastings? No—he disclaimed all necessity, by declaring the value of the lands to be properly ascertained; and no reason could be assigned for doing it, but a reason of guilt and criminality. The Directors heard of this appointment with all the surprise which their Lordships might imagine. Their remarks on it were in evidence, disapproving, in the strongest terms, both of the measure and the persons appointed to carry it into execution. To these he should add nothing. Let Mr. Hastings atone for his conduct, not to his Accusers the Commons, but to his Masters the Court of Directors. In all distant Governments, however wisely and cautiously guarded by laws, much must be confided to the integrity of the Governors. If their Lordships suffered an act of disobedience so flagrant, with corruption on the face of it so glaring, to pass unpunished, they might devise systems, they might enact laws for the good government of India; but they would do more mischief by a single act of disappointed justice, than any system of government, than any code of laws could do good.

He came next to the abolition of the Provincial Councils. It would hardly be denied, that it was the duty of the Company's servants to obey the Directors. On no subject had their orders been more explicit, than on the collection of the Revenue. They had expressly directed Mr. Hastings, if he found the system of Provincial Councils inadequate, to draw up a new plan, and transmit it to them for their approbation; but to make no alteration without their concurrence. In a subsequent letter they insisted on his adhering to the letter and the spirit of this order. When Mr. Francis left India, Mr. Hastings meditated a total alteration. If he looked at the Act of Parliament, if he looked at the orders of the Directors, he did so only to despise and insult them.

He abolished at one stroke the Provincial Councils, and gave to a new Committee of Revenue the whole management of the Revenue. This was indisputably contrary to the Act of Parliament, and contrary to the orders of the Directors; and on this alone he might call for judgment: but beyond the crime, there was circumstance on circumstance to prove corruption of the Act.

In the first place, it was contrary to his own opinion of right, a strong presumption of guilt, as appeared by his own letter of March 1785, in which he stated the danger of innovations in the management of the Revenue, and expressed himself so well satisfied with the system of Provincial Councils, that he advised the Directors to apply to Parliament to get it established by law. This system, so approved of in 1775, in 1776 he destroyed, root and branch, against law, against orders, against his own solemn opinion. He indeed found a reason satisfactory to himself, as he was always very easily satisfied of the propriety of his own acts, viz. that the Provincial Councils were only preliminary to a better system to be gradually introduced. Was this reason consistent with a total abolition? But he had another reason in reserve. The members of those Councils were become factious, and incapable of executing the duties of their respective offices; and therefore he divested them of their trust, and gave pensions to some, and new appointments to the rest, *because they were dismissed for no fault of their own*; as if pension had been a title to a pension, and incapacity the best qualification for an office. Their Lordships had heard from Mr. Moon, Mr. Yeung, and even from Mr. Anderson and Mr. Shore, that bribes received from Keleram and others had been matter of public rumour before Mr. Hastings thought proper to make any disclosure of them. From the moment that the Provincial Councils discovered that bribes had been drawn from their respective provinces, they became factious and incapable. Some were so weak as to believe, others so factious as to propagate what they believed. All were tainted—there was no remedy to be found, and he decided at once, *away with them altogether*.

Next the mode in which the general Committee of Revenue was constituted was equally objectionable. It consisted of four Members, with salaries to the amount of 50,000*l.* three of whom were Mr. Anderson, Mr. Shore, and Mr. Crofts, whom

whom their Lordships would recollect Mr. Hastings had detected in an error of 150,000 l. in stating the Nabob's accounts as Accountant. The office of Superintendent of the Chancery Records, an office of trust and controul, was abolished, and its powers transferred to the new Committee; and it was well worth observing, that the office at that time was filled by Mr. Ducarel, a man, by all accounts, of eminent integrity, ability, and experience. A majority of this Committee was to decide in all cases, the President having the casting vote when all the Members were present. The Governor-general and Council were not to interfere, except when expressly appealed to; and it was specially provided, that it was not necessary to record every difference of opinion that might arise. The whole power of the Revenue was thus transferred from the Supreme Council to the Committee, and care was taken that no means should be left of investigating its transactions. To this Committee Gungo Govind Sing was appointed Dewan by Mr. Hastings and Mr. Wheeler in Council. Here appeared the true cause of the whole change. The Provincial Councils had been abolished, and the new Committee erected, that this creature of Mr. Hastings, this instrument of peculation, might have the whole Revenue in his power. A subordinate office was abolished, because the person who held it might be a check on the conduct of the Dewan, *to prevent disputes*. To destroy controul, was indeed a good method to prevent disputes, but ill calculated to restrain peculation. The new Committee was thus wholly independent of the Supreme Council, and composed of members wholly unfit. But it signified little who were the members; by a paper in evidence, written by Mr. Shore, and confirmed by him now, it was proved, that they were *mere tools in the hands of their Dewan*. The Governor-General and Council divested themselves of power, not to vest it in Mr. Anderson and Mr. Shore, but in Gungo Govind Sing, in whose hands they were mere tools. The Committee, by the evidence of Mr. Shore, the friend of Mr. Hastings, and a member of the Committee, *went through the business; but to pretend that they did really execute it, would be folly and falsehood*. To attempt to add any thing to these and the other proofs contained in Mr. Shore's *minute*, would be waste of time. From what he had proved, he had a right to assume, that Mr. Hastings constituted

Gungo Govind Sing paramount over all the Revenues of Bengal, with his own son for his Deputy, so careful and curious was he to remove every obstacle to his measures, every possibility of detecting his peculations, contrary to law, contrary to his orders; and thus after the Directors had expressed their indignation at the appointment of Gungo Govind Sing to the office of Ameer:

There was only, he said, one sort of defence which could be set up by the prisoner to which he should be at a loss for an answer, and it was therefore a defence which he must deprecate.—It might be argued for him, that it was unfair to draw a criminal inference from his disobedience of the orders of the Court of Directors, because disobedience of their orders was his system—his constant, regular, and uniform course of government—the foundation on which he had built his administration—and from which to draw particular inferences would be unfair.—That no inference could be drawn from a man's rising in the morning and going to bed at night, or from his taking his repasts in the course of the day at his usual hours.—“Do not,” they might say, “draw conclusions from that which was uniform and regular.—It you can find any deviations from his usual course, any instance in which he paid obedience to the orders of the Court of Directors, or in which he regulated himself by the laws of his country, any inference that you can draw from thence will be fair, because the case will be particular; but you must not say, that this abuse was committed, or this misfortune was incurred, because Mr. Hastings disobeyed the instructions sent out for his government; he always disobeyed his instructions;—he disobeyed frequently without a motive.—When he had two ways of obtaining the same end, he never chose the course which they had prescribed, merely because they had prescribed it. It was the principle, spirit, and rule of his government; and therefore, to draw inferences from it would be unhandlome and unfair.”—“I,” said Mr. Fox, “Mr. Hastings's Counsel should think proper to set up this defence, I must fairly confess myself unable to refute it.”—It is unanswerable; it is a truth which every one who contemplates the Administration of the Defendant must implicitly acknowledge. He certainly did not deviate from that course,—and therefore this is the only Defence which I dread, and which I reprobate only for the sake of deprecating.”

A Member of the Council (he thought
he

he said, it was Mr. Macpherson), had called Gungo Govind Sing the native Chancellor of the Exchequer of India. This would give their Lordships some idea of the extent of the power and influence of this person. They well knew what was meant in this country by the Chancellor of the Exchequer. He was a great public officer, possessing the confidence of his Sovereign, and who ought, at least, to enjoy the good opinion of the country; but Mr. Macpherson meant not by this term to insinuate that Gungo Govind Sing was in any degree to be compared to the Chancellor of the Exchequer of England, or to the Finance Minister of any European Government. In England, think Heaven! the Chancellor of the Exchequer was a responsible Minister, subject to the inspection, check, controul, and censure of Parliament. He had justly great rank, high station, and powerful influence in the country; but he had not the power of extortion and rapine, nor the privilege of irresponsibility. Yet, limited as he was, what would be said in England, if his Majesty were to appoint a person to the office of Chancellor of the Exchequer, who had been convicted of pecuniary fraud—who had been removed from office for peculation and proved dishonesty. In the worst times of this country, so glaring and so bold a thing had never been done. But indeed no Minister of Finance in any one of the European Governments could, from the extent of his power, give us any adequate idea of the office of Gungo.—In every one of the limited governments of Europe, monarchical, democratical, or mixed, the officer who had the management of the Revenues was responsible to some power or other for the execution of his office. The native Chancellor of the Exchequer of India, on the contrary, had no responsibility, no check, no controul. Sixty provinces were delivered over to him, to pillage, plunder, and oppress as he thought fit.

He was a tyrant of the most complete and perfect kind.—Unlike the same officer in Europe, who had to collect the Revenues by prescribed means, it was his business to extort money by every possible art, and in every possible way.—He was to seize upon money wherever he could find it.—He was to force the miserable people by torture to open their recesses, and to deliver up their last pittance.—Such was the sort of office which the Defendant created—arming it with an extent of power which ought not to have been trusted in the hands of the best man

upon earth, and which he gave to the worst.

Mr. Goodlad indeed was the British Resident; and Devi Sing was the Sub Collector. Of the former, they had the authority of the Defendant himself for saying, that he was utterly unable either to discover or to controul the enormities of the latter. Mr. Fox read a passage to shew this, where the Defendant had said, that such were the talents for cunning and concealment of Devi Sing, that it was impossible for Mr. Goodlad to penetrate through his artifices and detect his enormities. The enormities of Devi Sing their Lordships had prevented them from introducing into the proof, and applying to the Defendant. However he might lament their being denied this proof, it was not his business then to dispute the Resolution of the High Court. The Counsel for the Defendant had, upon this subject, invoked the judgment of their Lordships, and the vengeance of Almighty God, not on their own heads, but on the head of their client, if the enormities of Devi Sing, as stated by his Right Hon. Friend, should be proved and brought home to him. He knew not how the Defendant might relish his part in this imprecation on which the Counsel had made; but in answer to it, if the time should come when they were fairly permitted to come to the proof of those enormities, he would, in his turn, invoke the most vigorous justice of the Noble Lords, and the full vengeance of Almighty God, not on the head of his Right Hon. Friend, but on his own, if he did not prove these enormities, and bring them home to the Defendant, in the way in which his Right Hon. Friend had charged them upon him; and this he pledged himself to do, under an imprecation on himself, as solemn as the Counsel had invoked on their client.

In the mean time, though they were debarred from detailing these enormities, it was free for them to argue generally from their known and acknowledged existence. It was fair for him to contend, that the system for the collection of the Revenues adopted by the Defendant, and put into such hands, was necessarily a system of oppression and tyranny. The unhappy people had a triple rent to pay. They had to pay a rent to the Company—a rent to Mr. Hastings; and a rent to Gungo Govind Sing;—the latter, having this to obtain from them by means for which he was not accountable, was left to practise every torture which ingenuity could invent, or remorseless cruelty inflict.

Accordingly, they found that enormities were committed, which English ears would abhor to hear, and English hearts shrink to suffer. It would naturally be believed that the Defendant, having laboured so hard to accomplish his purpose in settling Gungo Govind Sing in this secure post, did not fail to profit from the establishment he had made. It was fair to conclude that he had taken bribes, after this irresponsibility was created, because he had taken bribes before, where he was subject to detection, to censure, and punishment. It was proved on him, that he had received a bribe from Dinagapore through Gungo Govind Sing—that he had received a bribe from Nudeah through the hands of Gungo Govind Sing—that he had received a bribe from Kelloram through the hands of Gungo Govind Sing. These were proved, because these three provinces were sold, and the bribes received, before the Committee of Revenue was appointed, and which, therefore, he had it not in his power to conceal. He had taken these when all the cheques were in force. Was it to be believed that the moment he had broken down all the dykes that prevented the full torrent of his rapacity, that he from that moment ceased to be rapacious? Would it be believed, that having sold three provinces out of the sixty before he had broken down those dykes, and received the bribes from the hands of his favourite Gungo Govind Sing; that he did not sell the fifty-seven that remained, and which he had delivered over in full property to Gungo, to be treated by him as he pleased? No one bribe was discovered subsequent to this appointment (except, indeed, that of Nobkissen, which stood on distinct grounds); and indeed none could be discovered, for he had completely destroyed the means of detection.

Would it be said, that there was something in the frame and temperament of the Defendant peculiar to himself, and of which we could form no judgment from our knowledge of the quality of human nature in general?—Would it be said, that he was guilty of crimes to obtain power which he did not mean to abuse?—Would it be said, that he plundered, speculated, and was corrupt, only when there was danger in committing these crimes; and that the moment he could practise plunder, and speculation safely, he declined to do so?—Would all the crimes of the Defendant be ascribed only to his desperate bravery?—That he coveted bribes only for the risk which he run in accepting them; and that the love of wealth, and the avarice of gain, had

PART III.

no share in the system of his government? Such reasoning as this must be resorted to, before it could be believed that he ceased to take bribes, the moment that he had settled his instrument in a station which enabled him to take them with impunity. Let us observe his situation before this appointment, and after it. He was, previous to this appointment, in a state of continual embarrassment and alarm. He was subject to suspicion and detection of every term. He was teased with questions by the Court of Directors, which he was perplexed to answer. "You call upon me (says he) to account for 20,000l. received here, and 30,000l. received there,—and it is so long ago, that I do not remember why I took the sums, or why I concealed them; but I, no doubt, had a reason at the time both for taking and for concealing them." He was pestered with these enquiries. His own letters involved him still further; for, what he wrote at one time, he forgot and contradicted at another; he could not bear to be so teased and provoked—he was too much of a gentleman to keep accounts in the clear methodical way required by his plodding employers; and therefore, to get rid at once of questions, suspicions, and detection, he set up this new system. Then, all at once, he became moderate, just, and exemplary; there was no longer any power that could enquire into his conduct, and his conduct was no longer corrupt! It was not in rational men to believe, that he who had been guilty of such scandalous and direct speculation at a time when his crimes were subject to scrutiny and punishment, should, in the very instant that he had constituted a system for speculating in safety, have ceased to profit from the bold expedient.

Mr. Fox here drew to a conclusion. He said; he had many apologies to make to their Lordships for having occupied so much of their time; but the necessity for reading so much of the evidence—for quoting it in so many passages—had drawn him into length. At the same time, that he might shorten their labour and his own, he had in many parts referred only to the evidence. He trusted to their justice, that they would either give him credit for having correctly quoted what he had referred them to, or that they would themselves refer to the places, and see that the conclusions he had drawn were fairly deduced from the premises. He also hoped, from their justice, that they would be anxious to supply any point which he might have omitted.

trusted they would carefully peruse the evidence, and enlighten their understandings, where he had failed from want of diligence or from want of memory to do it.

He would briefly enumerate what had been proved in this part of the Charges against the Defendant.

They had proved, that the Defendant had received from the Munny Begum a lack and a half, and that it was strongly suspected he had received two lacks more, prior to the Act of 1773.

They had proved, that he had appointed the Munny Begum to the guardianship of the infant Nabob, contrary to the express instructions and orders of the Court of Directors, and that he had persisted in keeping her in the said office.

They had proved, that he had delayed to reduce the establishment of the Nabob when ordered so to do;—and that he had himself confessed, that his postponing such reduction for a time would have been purchased by large Presents.

They had proved, that he had received 240,000*l.* in bribes of different kinds subsequent to the Act of 1773, and before the appointment of a Committee of Revenue. That the defence which he had set up for the receiving of these bribes, namely, that they were received for the Company, was no justification of him, and was false in fact. That in the only instance in which he had refused a bribe, his conduct in declining the offer was double, perplexed, and fraudulent; and the reasons which he had assigned, inconsistent with the defence he had set up for his accepting of all the other bribes.

They had proved, that he had illegally appointed Aumeens; and that the circumstances under which he had appointed them, and particularly the persons whom he had appointed, were highly suspicious, and indicated a corrupt intention.

They had proved, that he had abolished the Provincial Councils, of which he had formerly approved, and against the directions of the Court of Directors.

They had proved, that he had introduced a sudden and entire change into the mode of collecting the Revenue, although he had declared it as his opinion, that the system, if changed at all, ought to be changed by slow and gradual degrees. He had done this by erecting a new Committee, to whom he gave powers inconsistent with the Act of Parliament; and that while he nominally invested in four persons most powers, he really appointed Gungo Govind Sing Dewan, with the whole efficient power in himself; not-

withstanding the displeasure of the Directors expressly declared against him; and notwithstanding that he had been previously convicted of fraud in an inferior station.

If the concurring force of all those proofs did not convince their Lordships of the Charge which they had made against the Defendant—that he was actuated by a corrupt principle in the government of Bengal, and that he was guilty of notorious bribery and peculations, the prosecution of which led him to the commission or to the countenance of the greatest enormities, not one of which could be accounted for by the principles which would have guided the rational conduct of an innocent man—he was sure that no words of his—no energy of language—no powers of persuasion, however strong, could have the influence. He would, therefore, have left the whole here to their Lordships, but that he thought he should take notice of some things which had been urged in the defence of Mr. Hastings, and which he had omitted to animadvert on in the review of the evidence.

It had been said, that by the appointment of the Committee of Revenue, there had been an increase of the revenue. If this were true, it certainly would be no justification—the fact was not so. But he would examine the assertion fairly. The year in which the Committee was appointed was a bad year, and it might be said that the influence of the Committee was not felt. Compare the three next years of the Revenue with the three years immediately preceding the appointment, and it will be found that they came three lacks short—Take an average of four years, and it was nineteen lacks short—Even here then the defence was false; but it was still more weak when we came to consider that this was a comparison of one bad institution of the Defendant, badly conducted—with another worse institution of his, worse conducted. But take the average of the three years of the Revenue under the Committee, and compare it with the same average when there was a majority against the Defendant in the Supreme Council, and the amount falls short forty lacks a year.

“Thus (continued Mr. Fox) we see the defence is false; but, if it were true, I contend that it is no justification. It would be scandalous to assert that every means by which Revenue could be extorted from the people was justifiable, provided that an increase of Revenue was thereby procured.”

Another

Another defence set up for the Defendant was, that after the appointment of the Committee of Revenue the ex- pences were greater, which accounted for no more coming into the Exchequer of the Company, though much more was paid by the people. "Good God!" exclaimed Mr. Fox, "is it possible that such a defence can be set up in the presence of the Commons House of Parliament!—Is it possible that any man should stand up and say, 'The prisoner is not to blame for not having filled the coffers of the public—that arose from the number of placements that he had to pay; but though he did not fill the Company's Exchequer, he completely emptied the pockets of the people.'—It was an unheard-of boast—it was a boast that deserved the execration of every good man. Let it be understood what is the principle of Indian finance. Let every Member go down and tell his constituents the new doctrine. The perfection of financiering consists not in the quantity of Revenue which goes into the public Exchequer, but in the quantity which is taken out of the private pockets of the people. We must go back to school again, and unlearn all that has been taught us. We have ever been made to believe, that that only is the true mode of financiering which brings the greatest possible proportion of what is taken from the private into the public purse; and that Revenue is not the end of good government, but the means. One would imagine that such a defence for the Defendant must have come from the Managers, and not from his own Counsel. By a strange inversion of all European reasoning, they think that we are not to form any estimate of the value of a system of finance from the quantity of money brought into the Treasury, but from the sum squeezed from the people. They are only anxious to prove that the miserable people were well sated; for, according to them, Revenue is not the means of government, but the end. I trust they will be taught better, I trust

they will be taught the necessary and wholesome truth, that if this absurd defence of theirs were true, it is no justification; that though more money might be procured by the appointment of Gungo Govind Sing, it was no good reason for the enormities he committed; for no power on earth has a right to take money from the people without giving to that people protection; and where, instead of the true and mutual relation that ought to subsist between the governor and the governed, the latter are delivered over to the power of such a tyrant, a breach is made in the first principles of society; and the Governor who so abuses his trust commits a scandalous outrage and a high crime. The very act of such appointment indicates a corrupt intention, and shews a predetermined design of abetting the horrors that are likely to follow."

Mr. Fox said, he would not longer detain the High Court. He was confident that he had only to supplicate their Lordships to an attentive perusal of the evidence; for on that review their indignation must be aroused, and their justice induce them not only to find the Defendant guilty, but to inflict on him as severe a punishment as they ever had passed on any person convicted before them of High Crimes and Misdemeanors*.

As soon as Mr. Fox concluded, the Counsel for Mr. Hastings informed the Court, that Colonel Polier, whom, by consent of the Managers, they proposed to examine *de bene esse* on behalf of their client, after waiting in town two years, had departed but yesterday.

The Court rose at half past four.

Their Lordships then adjourned; and the Lord Chancellor having resumed the Woolfack in the House of Lords, a further consideration of the Trial Warren Hastings, Esq. was upon motion put off until the FIRST TUESDAY in NEXT SESSION OF PARLIAMENT, all message sent to the COMMONS to acquaint them therewith.

PROMINENT PASSAGES in Mr. Fox's SPEECH.

* Perhaps no other man than Mr. Fox could have rendered so fatiguing a subject, as turning up of the evidence on Mr. Hastings's Trial, in the smallest degree productive of that might charm attention, or incite his hearers to endurance of its tediousness.

That amidst this barren waste some happy wanderings of the fancy might cheer and live, they who knew Mr. Fox will easily believe. Such an orator could never pursue a subject for its *own sake*, and not display the effervescence of his mind, the prodigality of power that must illuminate and embellish wherever men philosophize and feel.

Upon the comparison of his own talk with those of his fellow-Managers, he broke very finely indeed with the fascination of their subjects.

"The expulsion of Princes, the destruction of Kingdoms, the desolation of Provinces, the insatiable thirst of Ambition drying up the fountains of Fertility, and withering all the glowing beneficence of Nature—while at its howid march the very soil sickened with accu-
mulating disaster and dismay—these were subjects which, springing from a feverish mind, clung about the heart, and rivetted attention in horror.

"I (said Mr. Fox) have no such seducements for captivation—All I can hope for is the fair influence of Fact, and the resistless majesty of Truth—superior to all ornament, where Integrity and Honour decide upon the cause. Yes, my Lords, I am ambitious only to display all that I am prepared to prove. I am anxious only lest omission should injure ; lest forgetfulness deprive me of those arguments which one memory is, after all, perhaps insufficient to retain."

Upon the argument for Divine Interposition to discover Murder past all human expectation, he very eloquently quoted Judge Buller's address to Donnellan.—"Such a sentiment (exclaimed Mr. Fox) added a splendour nearly holy to legal light, that every one acknowledges. Yes, my Lords, happy is it for the world, that the penetrating gaze of Providence searches after man, and, in the dark den where he has hidden the remonstrances of Conscience, darts his compulsory ray, that, bursting the secrecy of guilt, drives the criminal frantic to confession and expiation."

He was not less successful in referring to the confusion of Accounts ; some of which were in one tongue and some in another—"Persian, Hindoo, and English—a Babel-like com-
mixture, where every thing, even to Managers, was

"Invisible, or dimly seen."

"Like a remark of Homer, that the robber sought out the preferable obscurity of mist and fog—the utter darkness of night was more easily perforated than such an artificial opacity—the light of discovery pierced with greater certainty through the one than the other. But (said Mr. Fox) does the honest man delight in involution and a night of shade ? No, simple and apparent, his purposes are direct, his statements obvious.—Integrity can have nothing to fear, where even Malice can never misconstrue."

Mr. Shore (he observed) had compared the office held by Gunga Govind Sing to a British Chancellorship of the Exchequer—"But, my Lords (exclaimed Mr. Fox), the power possessed by the most enlightened of those who have filled that high station—the most potent Minister, and, rising still higher, the Monarch whose confidence he has enjoyed, has been utterly unequal, and shrinks into nothing in the comparison of the authority of this man. Praise be God for it (cried the Orator), how every species of power is amenable to the Representative Body.—Extortion here cannot ravine unproved, and Cruelty can never come with Terror to the aid of merciless Rapacity. Here, Revenue insures Protection—secure that what is given is returned with the best usance, the vigilance of Government—the studied glory of the People."

Alluding to Mr. Hastings's reasons for the abolition of the Provincial Councils, that they were incapable of duty, factious and disorderly, he broke out thus keenly :—"And yet these were the men whom, at another time, this Governor-General affirmed were unsuccessful, not from their own defects, but the inconvenience of their offices, those offices too which he had previously applauded—and accordingly he had preserved the inconsistency to a miracle—for he had, at the abolition of their posts, recommended some to gratuities, and others to situations—that thus, Faction might be rewarded with a Pension, and Incapacity with a Place.—He accordingly nominated Gunga Govind Sing Dewan, whose nature never varied at atrocity ; and, in complete mockery of restraint, gave him also his own fun as a check upon the father's enormities. Thus did this Savage tyrannize over the lands and liberty—over the very lives of millions, upon whom his vengeance might in a moment alight, or whom his tortures Premeditation had prepared."

And now, coming to the imaginary defences of Mr. Hastings's Counsel, in a fine vein of rage and severity—"Let me beg permission to deprecate (said he) one mode of defence which, I fear, he set up ! In God's name, let me not be told that it is direct violation of the rejection of instructions, is only part of a system from which he has never departed—the constant scorn of a British Legislature ! the scoff of the mercantile directions of the nation ! To such a plea, I should be at a loss for a replication. If he claim continuance of prescriptive disobedience, and accustomary illegality, he will leave me without an answer."

He will not, like the Counsel (said Mr. Fox), implicate others in his vengeance ; but if he do not clearly prove all these particulars which I have asserted, upon his head—may the curse of that God they have invoked fall heavily upon me, and make me living the scorn of the striking monument of his anger, whose attribute is Truth, and from whom the punishment of Falsehood is assured."

END OF THE THIRD PART.

INTRODUCTION.

A NEW PARLIAMENT (in consequence of the dissolution of the former by his Majesty's Proclamation) having taken place since the ADJOURNMENT of the HIGH COURT OF PARLIAMENT ON WEDNESDAY JUNE 6, 1790, was summoned to meet on the 25th of November following, when his Majesty opened the Session with a Most Gracious Speech.

In consequence, however, of the time taken up in electing a SPEAKER and swearing in the Members, the HOUSE OF COMMONS did not take his Majesty's Speech into consideration until

TUESDAY, NOV. 30, when Mr. BURKE, previous to the question of the Address, thought it might be expected that he should draw the attention of the House to that sacred pledge of virtue, spirit, and firm perseverance, which the late House of Commons had, with its dying breath, bequeathed to them, their successors. It was customary, he knew, and he much respected the usage, that in the beginning of a Session, the expressions of the duty and attachment of the people to their Sovereign should precede any other declarations; but the expression for which they were now called upon, was that of respect and attachment to those principles of virtue and justice, and those ties of sympathy and humanity, congenial and common to the feelings of all good men, which bound them to each other, and were not alone important as far as they regarded the benefit and policy of this country in particular, but the honour and interest of human nature in general. The late Parliament had shown a noble, and what would prove an immortal instance of honour, feeling, and generous patriotism, in the Impeachment constituted against a Chief Governor, who had abused the authority invested in him, and brought reproach upon the *British* name.

Such of them as were returned into the New Parliament would, he doubted not, persevere in the same principles; and he hoped the new Members, who had not yet participated in that honour, would not suffer themselves to be surpassed in duty, honour, or patriotism. The renewal of that trial was, at the close of the last Session, fixed for the 1st of Tuesday in this. It so happened that the present was the day appointed, but that the

Commons were unable to attend, both from there not having been time for swearing in all the Members, and that respect and decency required that the speech of the SOVEREIGN should be answered with an Address, anterior to their entering upon any other measure. It was on this ground of respect, undoubtedly, that the subject of the Address should precede the Impeachment; for, important as it assuredly was, still of more importance was that which involved the interest, the honour, the character, and perhaps the existence of the country, and the regard that should be paid to the welfare of posterity. Whatever rumour or suspicion may suggest, he was not prepared to say whether this circumstance was meant from another quarter (the Lords) for the purpose of interrupting or destroying a Prosecution which the people of *Great Britain*, by means of their Representatives, had thought it their duty to institute. But should such an intention be attempted to be carried into effect, he would consider the honour, the privileges, and the existence of the House of Commons, and their importance in the scale of Legislation, to be for ever annihilated.

It was not his intention to say more upon this subject at present, but to apply for information to the SPEAKER, who was in so great a degree the repository of the privileges and independence of the House, and whose opinion, besides his high situation, must be of great weight, from his personal qualities as a man, to know whether the proceedings of the House of Commons in the case of the Impeachment of Mr. HASTINGS was to be affected by any arrangements of time made by that tribunal before which they had carried it.

The Speaker expressed his satisfaction at having an opportunity of declaring fully, and in the most unqualified manner, that the dissolution of a Parliament could not, by the Constitution of *Great Britain*, dissolve, at the same time its measures, or affect in any degree the conduct of an Impeachment in which they were disposed to proceed. He hinted at the same time an opinion, that the opinions or conduct of another House were not adverse to their renewing proceedings on that subject; should it however be otherwise, it would unquestionably become the subject of very serious attention in that House.

Mr. Pitt was not sorry that the subject should have been mentioned; for should the suspicions stated by Mr. Burke be realised, the House must consider its privileges to be very grievously invaded. He could not, however, think that the other House had that in contemplation; and, as there was no other ground than suspicion, notice should be given of the time on which a motion of such consequence should, if at all necessary, be made.

Mr. Burke said, he was ready to propose his opinions and a Motion on the subject immediately; but as proceedings may in some cases be taken too late, so in others they may be premature. He should therefore wait to see whether the rumour was well founded, and if so, give notice of a Motion.

TUESDAY, December 9.

Mr. Burke called the attention of the House to a subject of the most serious and important nature, upon which he was about to make a proposal for future proceedings.—That he alluded to the impeachment of Mr. Hastings was obvious; and the proceedings he should propose were what he conceived would best answer the ends of public justice, as well as the national honour of this kingdom; and he could assert that, if the House considered his proposal as necessary to justice, and the purposes for which it was intended, he was certain, that it would be adhered to with the firmest resolution, and most steady perseverance. He had mentioned public justice; but what was even of much more consequence than public justice, the vital principles of the constitution, the fundamental laws, the usage of Parliament, and the most valuable rights and privileges of that House, which ought to be held in the dearest and most inestimable light by every lover of his country, were deeply involved in the subject, upon the management and most ample examination of which he was now to offer his opinion. In doing this, he must recur to the annals of former times for precedent, and consider and compare what was then practised, with what it was now most wise and expedient to adopt. The time which he chose to deduce his example and his proceeding from, was of all others the best adapted for example and for practice. It was a time when the laws and usages of Parliament were perfectly understood, and a time when above all others the Rights and Privileges of the House of Commons were fully discussed, boldly asserted, and completely maintained and settled: this period was in 1678; and he would state to the House the proceedings then followed upon the impeachment of the Lords Wardens, Belasyse and others: the impeachment of that day, however, on which he meant to lay the

principal stress, was that of Lord Danby, which was as much in point at present as any case could be, and perfectly analogous in its circumstances, as far as related to the effect of a dissolution of Parliament, while a trial by impeachment was pending.—Mr. Burke here read the vote of the House of Commons in 1678 upon Lord Danby's impeachment, which had been interrupted by a dissolution of Parliament, and was continued by this vote, which he meant to take as a precedent and example in conducting the future proceedings relative to the trial of Warren Hastings. The vote was, "That a Committee of this House be appointed to examine and take into consideration the proceedings of the last Session of the last Parliament, and that the said Committee do report to this House to-morrow."

Mr. Burke said, he did not mean that any Committee should be appointed to examine all the transactions of the last Session of the last Parliament; but as far as related to the trial of Mr. Hastings, he meant to make this vote his direction; and, considering the magnitude and the importance of the subject, the fineness and precision that ought to mark the determination of the House upon it, and the serious consequences that must follow that determination, he thought it proper to give timely notice of his intention; for though there was a full House now, he expected a much fuller soon; and full indeed he wished it to be, when so great a question was to be discussed. He then moved, "That on to-morrow fortnight this House do resolve itself into a Committee of the whole House, to take into consideration the state in which the Impeachment of Warren Hastings, Esq. late Governor General of Bengal, was left at the dissolution of the last Parliament."

The Chancellor of the Exchequer rose, and expressed his readiness to concur in the motion made by the Right Hon. Gentleman, because it was so properly and cautiously worded as to merit his entire approbation; he likewise conceived the motion to be absolutely necessary, and that it would produce a most serious and ample discussion, and a solid and unalterable determination upon one of the greatest points that could come before that House. What particularly pleased him in the motion was, that it went entirely to the desired purpose of deciding upon the general question, if there could be any doubts upon it, for he had none, concerning the laws and usage of Parliament with regard to impeachments, without tying down those who might express their opinions on either side, or who might entertain doubts as to any acquiescence in the proceedings that may be proposed or adopted in any particular impeachment, both in language and reasoning.

Mr. Pitt strengthened the arguments and opinion of Mr. Burke, and was particularly

careful to keep the general question perfectly distinct from any particular case; he expressed his own sentiments to be quite decided and clear from doubts; and he would, when the proper time came, make them known to the House. He approved much of the notice that had been given; and, whatever doubts any Gentleman might have upon a subject of so great importance, he thought the House was always entitled to have due notice before any motion, that could tend to bring on a serious discussion, was made.

Mr. Baftard said, that before such a motion had been made, in his opinion, another might have been adopted, which would entirely preclude the necessity of that proposed by the Right Honourable Gentleman. It went, he said, to bring on, to be sure, a very serious and perhaps dangerous discussion, which might create disputes that ought to be avoided, and that he could not see any necessity to provoke. His way would be, to state a different motion, that certainly ought to come on first, because upon the result of his motion depended the necessity, or otherwise, of the Right Honourable Gentleman's. It was, that the House should consider whether they ought to go on with the impeachment of Mr. Hastings or not, and by determining on this question at once, they would either give it up, or then it would be time enough to consider of future proceedings. He said, he was particularly averse to any proceeding that might occasion those dangerous disputes which he had alluded to, and which he thought might be very fatal in their consequences, and at the same time were easily to be avoided, by taking a direct question upon the subject, and not an abstract one that could lead to disagreement, whatever opinions might be given upon it. Mr. Baftard followed this idea for some time, when he sat down.

Mr. Pitt rose a second time, and strongly enforced what he had before observed; he was much against the idea started by the Hon. Gentleman, that the motion was an abstract question; he considered it as one of the greatest that had been ever brought forward in that House, and that it involved in the discussion and determination matters of the greatest weight, as whatever might be the opinion of any Gentleman in particular cases, that had nothing to do with this interesting general point; and whatever determination the House came to upon it, and he could not believe that there could be any difficulty about that determination, it must be a solid, firm, and unalterable decision, that is, not only to be entered into, but adhered to in the strictest and most solemn manner, as a fixed and established law of Parliament, that had been deliberately considered and fully discussed, and that they had determined and pledged themselves to abide by.

Mr. Baftard still argued as before, but said, that with regard to the effect of a dissolution of Parliament upon an impeachment, he believed, as well as those Gentlemen who had spoken before, that there was not a doubt in that House; however, he did the less see any necessity for the Right Hon. Gentleman's motion. He was and always would be against strong resolutions and determinations of that House, that were likely to promote disputes, and could not perhaps be followed up: for his part, if he at any time agreed with the House in such proceedings, it would be with a fixed determination to keep to them, and not going into them merely for the sake of discussing an abstract question on these proceedings, which they might afterwards find they could not abide by.

Mr. Mitford seemed to agree with the last speaker, and rested his argument upon the impropriety of referring new Members to the proceedings of last Parliament, who he thought were no ways bound to know what had happened in that House, when they were not Members of it.

Mr. Burke wished to give every information that could be wanted; and as those Gentlemen had been alluded to who were new Members, he meant to move, that the two last Resolutions of the last Parliament might be read; which would shew, in the first, their desire, as speedily as possible, to bring the objects in view by the impeachment to determination agreeable to sound judgment and impartial justice: and in the second, their firm and steady resolution to follow that impeachment till the ends of national honour and substantial justice were fully satisfied. He then adverted to what Mr. Baftard had said about the abstract question, and forming Resolutions upon discussion that they might afterwards recede from. He said, that a general judgement must be had in all cases, before any particular point could be decided upon; and he assured the Hon. Gentleman that there was no meaning on his part, nor he thought on any part of the House, to bring on discussions for the purpose of creating disputes, or of framing Resolutions that, if once sanctioned by the wisdom and authority of that House, they would ever recede from; he knew it to be otherwise, and that they would be most solemnly and strictly adhered to.

Mr. Burke was going to move, That the Resolutions of last Parliament be read, when

Mr. Fox got up, and did not mean to oppose reading those papers, but rose in consequence of what had fallen from an Hon. Gentleman respecting the ignorance of new Members on subjects discussed in former Parliaments. He said, it was understood that every Englishman is to be acquainted with the laws

of Parliament as much as with the laws of the land. If he had never been in Parliament in his life-time, he would have thought it his duty to know, and it certainly was the duty of every British subject to know, the laws and the votes of Parliament, which were and ought to be as fully promulgated as any laws whatever.

Mr. Mitford said a few words in explanation.

Mr. Pitt saw no necessity for reading the Resolutions, and wished to be clearly understood when he mentioned that the objects of this motion were to determine, in the most solemn manner, upon the general question: he likewise said, that he did not consider that determination as any way connected with a resolution either to carry on or give up the particular trial alluded to; or, if such a thing could possibly be imagined, as that the trial was determined by the dissolution of the last Parliament, he had said nothing of how it was to be revived; he avoided all discussion of that kind, though he repeated that he did not think a doubt could exist upon the subject.

The Resolutions were read by the Clerk; after which Mr. Burke made a few more observations, and his motion was put and carried unanimously.

Adjourned.

FRIDAY, December 17.

The order of the day having been read, "That the House resolve itself into a Committee of the whole House, to take into consideration the State of the Impeachment of Warren Hastings, Esq."

Mr. Burke said, he could not see any grounds for resisting a motion for the Speaker to leave the chair, and moved it accordingly.

Mr. Baftard rose to oppose the motion, which Gentlemen would all recollect they had been given to understand was directed to two purposes: First, to declare the Right of that House to proceed in the Impeachment; Secondly, to decide whether the House were willing to exercise the right and persevere in the prosecution. His reason for opposing the Speaker's leaving the chair, Mr. Baftard said, was, that he had rather meet the question in the first instance than give an inch of ground up to a matter that he did not approve. He did not conceive that the Dissolution of the Parliament affected the right of the Commons of England to persist in the Impeachment; he could not imagine therefore why that Question was called for, or thought necessary to be agitated. If the House should deem it necessary to put that abstract question on their Journals, he hoped they would persevere in it to the last. In case the House of Lords shall deny that right, they might appeal

to the people. If he carried his motion, he meant afterwards to move that Mr. Hastings's trial be put off till that day six months. The present Parliament, being a new one, would do well to profit by the proceedings of the former. They would do well to pause before they consented to adopt an impeachment to which, but from report, they must be utter strangers. Let them look into the Journal, and they would find falsehoods in the Resolutions of the last Parliament; they would find Resolutions of one day directly contradicting the Resolutions of another. First, when it was resolved to impeach Mr. Hastings, India had been represented as a desert, governed upon a corrupt and ruinous system, which must necessarily soon bring on its destruction. Afterwards, when another object was in view, they had resolved that India was in a most flourishing state. He confessed, Mr. Baftard said, that he had been one of those who voted for the impeachment of Mr. Hastings; but he had given his vote under the expectation that Mr. Hastings's system of government had been to be done away, and a very different system established in its stead. But had that been the case? Most certainly not. The Board of Control, he found, sanctioned the old system, and confirmed all Mr. Hastings's measures. On that account, and because he could not reconcile such contradictions, he retracted his opinion, and repented that he had been deceived into supporting the impeachment. He could not look at the impeachment, and forget certain constitutional principles that were implanted in his breast. He recollected, that one article of the Great Charter of our freedom was, that no Englishman should have excessive fines imposed on him, nor should any man undergo cruel and unheard of punishment, he his crime ever so great; and a great point was, that every man who was accused should have the most speedy means afforded him of acquittal or condemnation. These principles had been all grossly violated in the case of Mr. Hastings. He had been for three years together exposed to the eyes of his fellow-subjects as the greatest villain in the world; comparing the length of time that it would take to go through the remainder of the Articles, it would be one-and-twenty years before Mr. Hastings could be put upon his defence; and, allowing the same time as his accusers had taken, forty-two years would elapse before they would have got to that period, and then there would be a reply from the Managers of a few years more, before the Lords could conclude the whole and give judgment. Let Gentlemen consider what must be the feelings of a man who found himself accused and held up by so high

an authority as that House, to public execration as the greatest villain on earth, without a prospect of an opportunity of clearing himself; for where was the prospect of his having that opportunity, conducted as the trial had been? If therefore the impeachment were continued, it could not but operate as the most cruel and unheard of torture. Mr. Bastard complained of the manner in which the Charges had been prepared and carried up to the bar of the House of Lords: voted one day, brought in the next, adopted almost without reading, and hurried away to the Lords. Several of them were actually never read to the House. Could then a new Parliament take upon themselves to go on with the impeachment? Should they, Mr. Bastard said, reject the impeachment, Mr. Hastings would in consequence have the opposition of one House of Commons against the conduct of the other, together with the approbation of his employers, and of the former House of Commons as far as their Resolutions went. When the power of the House, instead of being the protector of innocence, was made the terror of the accused, Mr. Bastard said, away with such a system of justice; he would have nothing to do with it. The Court, he observed, had undergone a change of no less than forty by death. He mentioned the advantage the prosecutors had in bringing forward their Witnesses, whereas by the course of Nature many of them might drop off before Mr. Hastings could be put on his defence. It had been said, that the impeachment ought to be proceeded in for the honour of the last House of Commons. Mr. Bastard said, he thought but little of their honour who had dealt in such gross contradictions. The object of all punishment was the prevention of crimes; but the dropping of the impeachment, he observed, could not be attended with any ill consequences, because, another mode of judicature having been instituted, what had happened could not happen again. He complained of the impropriety of lending the weight of that House to crush an individual; there were those, he said, who wished the trial at an end who would vote for the question, if mixed up in the privileges of the House. They had no right therefore to take Mr. Hastings to their aid. Impeachments, he observed, had received a deep wound, and required the balm of moderation to be poured in to heal it. Mr. Bastard made a few more observations, and concluded with opposing the Speaker's leaving the chair.

Colonel Macleod, after declaring that he rose to second the motion, said something so personal to Mr. Burke, that he was called to order, and informed from the Chair, that personal reflections on any Member were not

allowed. The Colonel apologized to the House, and said, he wished not to be disorderly, but though no man admired the abilities and the virtues of the Right Hon. Gentleman more than he did, after what had passed respecting Mr. Hastings, he imagined he had not gone too far. The Right Hon. Gentleman had now artfully and insidiously avoided bringing forward any arguments for his motion, and thereby left the opposition to it to be made by anticipation. He considered the present as an attempt to make use of the privileges of the House to destroy Mr. Hastings. The Colonel agreed that the dissolution of the last Parliament did not abate the Impeachment. To give up the rights of that House would be to put it in the power of a bad Monarch to impede the course of justice, and put a period to the just prosecution of any State culprit; we certainly had not that to dread from our mild Sovereign, but a Charles the First or a James the Second might reign hereafter, and therefore they could not be too jealous of their rights and privileges. But he asked, Was the House of Commons under the necessity of seizing on a poor individual, to assist them in asserting their privileges? The House might, without that, go into a Committee after the Impeachment was disposed of, and hold a conference with the Lords on the Question of Right; at any rate, Justice, Honour, and Humanity, forbid the proceedings they wished to go into. They ought not to dig the foundation of their privileges in the bowels of a fellow-citizen; and if they said they were bound by the Resolutions of the last Parliament, they voted themselves the *Long* Parliament in effect. Could they not suppose Mr. Hastings to have died that evening of an apoplexy? Why not take up their right separately from any connexion? They ought not to follow the advice of the Right Hon. Gentleman; Edmund Burke was constitutionally dead, though alive; Edmund Burke died with the last Parliament; and for a new House of Commons to think they were bound to follow the path that Right Hon. Gentleman had taught the last Parliament to tread, would be just as absurd as if he were to meet a young man in the street, who were to say, "Sir, your father knocked my father down, and run him through the body. Pray, Sir, knock me down, and run me through the body, that I may be entitled to my revenge." The Colonel then said, he wished particularly to implore the attention of the House to what he should now offer. He had had the honour to serve in India during the late very active war; and there was no part of India which he had not visited. He therefore trusted the House would conceive him to be a competent evidence

dence on the most material parts of the Articles voted by the late House of Commons; and he assured the House, upon the word of a soldier and a gentleman, that he never saw Mr. Hastings till, to his surprize, he saw him appear as a culprit in Westminster Hall; that he never had corresponded with him in India; that he never, directly or indirectly, received the slightest favour from him; but justice and truth demanded from him that testimony, which he would deliver on his conscience and upon his honour. The Colonel then said, that he had commanded an army in the late war on the Malabar Coast; that since the Peace he had held many and long conversations with Tippoo Sultan on the characters of the different persons who had filled high stations in India; he had often sat up with him all night in his tent, and been treated by him with the greatest familiarity; that this Prince, whose abilities and penetration no man could dispute, had invariably spoken of Mr. Hastings in the warmest terms of respect, though he described him as the greatest enemy he had in the world, having by the assistance he afforded to the Carnatic and Bombay during the war enabled those Presidencies to stop the progress of his arms; that the same sentiments were entertained by the principal men of his Court; that he had been all through the Carnatic on his way to Bengal, and he could assure the House, that every person he conversed with gave him the same character of Mr. Hastings; that he arrived in Bengal about three months after Mr. Hastings had left it, and travelled through that kingdom, Bahar, and Benares; that he had been much in Oude, at the Court of Delhy, and with Madajee Sindia in the Malawatta country, and he declared, upon his honour, in the most solemn manner, that he never conversed with any one man, of any one rank throughout these extensive kingdoms, who did not speak of Mr. Hastings in the warmest terms of affection and regard. He implored the House to attend to what he should now state, and to give him credit for his sincerity, for he could not have any interest in misleading them. He did then solemnly assure them, that the countries under Mr. Hastings's administration, he meant Bengal, Bahar, and Benares, were beyond all comparison the finest flourishing countries in India, in regard to population, agriculture, and the happiness and security of the people; that the next most flourishing country was Oude, where Mr. Hastings had an influence; and that the countries under the native Princes, Malomedane or Hindoos, were in a very inferior degree indeed of prosperity. All the arrangements, the Colonel said, were those of Mr. Hastings; whatever he saw was the

effect of his measures; and he strongly affirmed, that the same systems had been continued by Sir Jolin Macpherson and Lord Cornwallis: the former was, he said, his most intimate friend; and to the latter, whom he beheld with filial regard, he was under infinite obligations. He would not say, that the country under them was not in a progressive state of improvement: Undoubtedly it was; but it did not detract from their great merit to say, they followed precisely the plans of Mr. Hastings. Certainly they did—he knew it to be a fact. “How then,” said the Colonel, “was I surprized to read, on my return to England, Articles presented by the late House of Commons, attacking the whole system of Mr. Hastings, foreign and domestic, and stating, that the countries under his Government were desolated and ruined?” The fallacy and falsehood of these assertions he well knew, and if that House would believe him upon his honour, as a soldier and a gentleman, they could not adopt what the last Parliament had voted. Added to this, he knew that Mr. Hastings was the Saviour of India during the late war, while loss of Empire and misfortune had attended Great Britain in other parts of the world. [The House seemed to pay very particular attention to this part of his speech.] He then entered into a defence of the Company's service, which he did, he said, from justice, not from personal regard, for he had been very ill used by the Company's servants, from the mere circumstance of his being a King's Officer, and enjoying a considerable command. He said, they were beloved by the natives; and if we ever should be driven into the sea, which some had charitably wished we might, it would be a most unfortunate day indeed for that country. The Colonel again, in the most solemn manner, disclaimed all personal motives; spoke highly of the Administration, but hoped this was not to be considered as a party question, and that the information the House possessed would induce them to abandon Articles which were void of foundation.

Mr. Johns differed much on the principles of the Constitution from the two Hon. Gentlemen. He said, with regard to Mr. Hastings, he did not know the man, he only knew him to be a State delinquent, and he hoped the justice of his country would soon overtake him. Instead of employing his little capital in building houses, planting shrubberies, laying out gardens in the most extravagant and expensive manner, and forming a scene of Asiatic luxury and splendour in the heart of an English country, it would have better become him to consider himself as a culprit and to have demeaned himself accordingly.

accordingly. The tender mercies of Mr. Hastings's friends, Mr. Johns said, were cruelty and feverity. By putting a stop to the Impeachment, as they wished to do, they would leave him half accused, half innocent, half guilty, half execrated. The right of Impeachment, Mr. Johns said, was the safeguard of the people, and that House ought to support the rights of the Commons of England, and not suffer them to be done away by a side wind, or blasted by a dissolution.

The Chancellor of the Exchequer, in a speech fraught with the greatest perspicuity, cleared the way for going into the Committee. He said, he rose to speak a few words, not to the merits of the arguments of the Hon. Gentlemen, but to the order of their proceeding. A motion had been made for the Speaker to leave the chair. That he found opposed by two Hon. Gentlemen who wished to put an end to the trial, though they both allowed the Right of the House to go on with the Impeachment, and said there could be no call to doubt it; whereas the very thing the Hon. Gentlemen proposed would throw a doubt upon it, and yet would not effectually put an end to the trial. There could not, Mr. Pitt said, be two more distinct questions than they were; the one, the Question of Right; the other, the Question of Discretion; or whether, the Right having been first resolved, the House were willing to carry it into execution and effect? One of the Hon. Gentlemen had been so good as to favour them with an admonition, and to beg that it might not be considered as a Party Question. So did he. The subject related not to any party consideration, neither had it any thing to do with Mr. Hastings, his merits nor his crimes; he begged therefore it might not be made a personal question by that Gentleman's friends and advocates. It related to the permanent principles of the Constitution, and ought to take the lead of every other consideration. The two Hon. Gentlemen, Mr. Pitt observed, wished that the Speaker might not leave the chair, and were desirous of putting an end to the Impeachment. What effect would that have on the constitutional question? Could they conceal from posterity the reasons for which they did so, what sort of an appearance would it have, if they carried the matter as they desired? One third would vote for it because they thought they had right, another third because they thought they had no right, and the other third because they did not wish the trial to proceed. Thus would it be a complicated question, and though one of the Honourable Gentlemen argued against an abstract question, he would

in fact have taken the only means of making the Question of Right, which he proposed to put after putting an end to the Impeachment, purely abstract. Some Gentlemen, Mr. Pitt said, wished to put an end to the Impeachment as cruel to Mr. Hastings: Mr. Hastings's hardships were no reasons against the Speaker's leaving the chair; but rather for it. If the Speaker did not leave the chair, what sort of an acquittal would that be, compared to the Speaker's leaving the chair? in which case, should the Question of Discretion be negatived, Mr. Hastings would then stand acquitted by the Impeachment dropping after they had been allowed an opportunity of enquiring into the reasons for proceeding or not. If the Gentlemen were serious, and thought they could obtain a majority of votes, they ought to do so upon a deliberate enquiry, which could only be gone into by suffering the Speaker to leave the chair, and not, by bringing two distinct questions, set off in a manner which would leave Mr. Hastings neither guilty nor innocent. Mr. Pitt therefore said, he hoped the Gentlemen, for the sake of their own object, would agree with the motion for the Speaker's leaving the chair.

Mr. Bastard rose to explain, and complained of having been misrepresented.

Lord William Russell said, there would be danger to the Rights and Privileges of Parliament, and to the constitution itself, if the Impeachment was not suffered to proceed.

Mr. Cator rose next, and was upon his legs a considerable time.

Sir William Yonge said, if he had wanted any ground for opposing the Speaker's leaving the chair, the Noble Lord under the gallery, and the Chancellor of the Exchequer, had given him constitutional ground for dissenting from the Right Hon. Gentleman's motion. Without arguing whether the dissolution did or did not abate the Impeachment, he declared he was against agitating the question, and for that reason should oppose the Speaker's leaving the chair. There were, Sir William observed, near 170 Members of the present Parliament who did not sit in the last; were they ready, he asked, to be bound by the resolutions of the former Parliament, or would they suffer themselves to be shackled by the Acts of the last House of Commons? There were many reasons, Sir William declared, that operated in his mind against going on with the Impeachment: first, the notoriety of an Englishman's having been three years on his trial, and not having had an opportunity of making his defence yet; that was sufficient for him to reject the Impeachment. It was worse than the severest sen-

tence. He said, he saw no analogy between the subsistence of this right of Impeachment and the permanent foundation of the Constitution. But if there was no other reason for refusing, let the House recollect that Mr. Hastings's tribunal was changed in several of its most prominent features; many of his Judges were dead, and several of his accusers actually become his Judges: upon these and several other accounts, Sir William said, he should oppose the Speaker's leaving the chair.

The Chancellor of the Exchequer said, those Gentlemen who had expressed so much disinclination to proceed with the Impeachment might conscientiously discharge what they thought their duty by moving, whenever they pleased, in the Committee, that the Chairman leave the chair.

Mr. Fox said, he should not trouble the House long, as the line of proceeding had been so clearly, intelligibly and able stated by the Right Hon. Gentleman over-against him, that he thought no man could object to the Speaker's leaving the chair. Mr. Fox said, he should not then speak a word in favour of the prosecution, because if it were the most unjust possible, and the conduct of the Managers had been the most culpable, that was no reason against the Speaker's leaving the chair; nor whether the impeachment abated, for that might be considered in the Committee; and whether the two questions were abstract propositions, was a matter as little to the purpose then as any other indifferent thing, since that circumstance furnished no argument against the motion made by his Right Hon. Friend. If it should be the general opinion that the Impeachment does abate, or that there had been any culpable proceeding on the trial, that certainly might be considered in the Committee also; the reason therefore for so little being said by him then was, that that was not the fit opportunity.

The Solicitor General (Sir John Scott) said, he should finally give his vote as the law of the land and the privileges of that House should require. Sir John said, he thought the House should act with great deliberation when they were settling what their privileges were; as the best way to secure their privileges was not by dint of power to assert what they might deem privileges against the law of the land.

The strangers were here desired to withdraw, and the gallery was cleared, but the House did not move; Mr. Burke's Motion for the Speaker's leaving the chair being carried.

The House having resolved itself into a Committee, Sir Peter Burrell in the chair,

Mr. Burke rose, and began a very lively and masterly speech with one of the most pleasant and fanciful retorts on Colonel Macleod we ever heard. When we had refused our seat, Mr. Burke was saying the House had heard arguments worthy of such a cause from those who had endeavoured to crush the Impeachment; for his part, he knew not, after what was past, how to push his argument. His fate was sealed, his doom anticipated, and they had heard that he was dead, and buried with the last Parliament; nay, his name had been placed over his grave to tell the world that Edmund Burke was gone for ever. He would tell the Hon Colonel, however, whose merits as a gallant officer were well known in that House, though his person was new to them, that there was a Play, the scene of which was laid in the Colonel's own country, that said,

“ ——— the times have been

That when the brains were out the man would die,

And there an end; but now they rise again,
With twenty mortal murderers on their crowns,
And push us from our stools.”

And here (said Mr. Burke) Banquo is again! his Ghost shall always stand up to maintain and assert the honour of the House of Commons. When he was said to be gone, he declared that the Hon. Gentleman had but anticipated what would shortly happen, and one ten times more vigorous, more able, but more active, would then come to sustain the honour of that House, and the dignity of its privileges. The Honourable Gentleman who first declared he would oppose the Speaker's leaving the chair, without advancing any one argument, had spoken with all the zeal of a convert, who condemned himself merely that he might condemn others. He did not think, he said, when the Hon. Gentleman put on a new suit of cloths, that he would so soon have appeared in the cast clothes of the last Parliament. The Hon. Gentleman who had said they ought to give up the Impeachment without enquiry, he was a little surprized to see arraying again those arguments that had been routed and drummed out of the regiment last campaign, in order to bring them to the attack again in the present. They had heard them again and again from an Honourable Gentleman, who, being the known friend of Mr. Hastings, might be excused for trying to make the most of them; but they came with an ill grace from a Gentleman who had voted for the Impeachment, and was a man of known virtuous independence of character. With regard to the other Hon. Gentleman, who had been a great traveller, and had told them

a tale

a tale, a kind of *Arabian Nights's Entertainment*, he owned he should have liked to have been present at the *Modern Midnight Conversation*, which they had heard recited? How did the Honourable General address Tippoo? Did he say, your name is *Marcus Aurelius*, or any other great hero of antiquity, renowned for the mildness and liberality of his character? If he did, who would dare deny it? He was sure he would not now dare, Mr. Burke said, if he was in Tippoo's company; *non scribere contra eum qui potest proscribere*. It must be a pleasant sight, he thought, to behold an European General, Tippoo Saib, and one of his Ministers, engaged in a tent at midnight. It was but had logick, however, to bring there, that because Tippoo Saib said, in a midnight conversation, that Mr. Hastings was a good man, therefore the Impeachment brought in the name of all the Commons of England ought to be put an end to; it would be much for Mr. Hastings's honour for the trial to go on, and for Colonel Macleod to be his witness; he might then state what he knew in his favour before the House of Lords, who were to be his judges. Mr. Burke followed up this with a variety of more serious observations and arguments: he said, he did not expect from generosity and justice the charge of oppression of Mr. Hastings on the score of lengthening out his trial; no delay had been made by the Managers; the Lords had never imputed any; their conduct was in the face of day; they had often gone into Court with almost the whole House, and the Speaker at their head attending, and they had sometimes stayed in the Court the whole day, and witnessed the Managers mode of proceeding. With regard to the length of time that the trial would take to finish it, it never had been the intention of the Managers to go farther than the next article, the Charge respecting Contracts; but he must say, that any hardship that could be fitted to have arisen from the length of the trial, was owing to Mr. Hastings himself, who might, day after day, have lightened himself of that load of injury. "But no," said Mr. Hastings, "I'll bear all the charges first, and then I'll make my defence." When his Right Hon. Friend (Mr. Fox) had closed the Charge of Betrayals, Mr. Burke said, an option was then made to Mr. Hastings, of going upon his defence, but he refused; he had himself to blame therefore, and no one else. But the Hon. Gentleman had said, confounding Mr. Hastings, and their Rights, formed a complex question. Direful charge! Having cleared the way, they proposed an abstract question, coupling with it its object and its example, which was the only useful way of proposing abstract questions. That they re-

PART IV.

ferred to a Committee of the whole House, of which they had four grand Committees, a Committee of Privileges, a Committee of Justice, a Committee of Trade, and a Committee of Religion. That was the grand Committee of Privileges and of Justice; and upon the fullest consideration, the result had been to take the subject up in that manner, as there was no doubt in that House as to the existence of their Privileges, nor an idea of their being doubted by any other branch of the legislature. Indeed they proposed only what had been admitted five hundred years. Mr. Burke, after a few more observations, said, it was nevertheless natural for them to entertain some small jealousy of the House of Lords' silence; and not to have done something upon it, would have been to have committed a self-murder on the honour of the House. Besides, the House of Lords possibly expected they should make the first movement. Under that impression it was, that he had prepared the motion he meant to conclude with moving. The Precedent he had followed, had been that of the Earl of Danby's case in 1678. Mr. Burke assigned his reasons for this, and then burst into a most animated eulogium on the glorious and sacred rights and privileges which it was the duty of the House of Commons never to abandon, and thereby put it in the power of a bad Minister to snatch a State culprit out of the hands of justice, but always to preserve them inviolate; and as they had been handed down from their ancestors, he hoped they would transmit them to posterity. He declared, that in times of the most turbulent Democracy, there had been one way of bringing State criminals to justice, and that was certain, constant, and immoveable, viz. by Impeachments of the House of Commons. In no place had it been asserted, that the prosecutions of that House had been abandoned, and if they had no way of preserving any constitutional privilege for the public good, they were bound not to suffer any other Court whatever to do that, which they could do for themselves; they were to keep firm to it, and not betray their trust. The Hon. Gentleman, Mr. Burke said, seemed afraid of a difference with the House of Lords. He declared, that he did not wish to dispute with the other House. ~~For only would court such a contest.~~ But if they gave up their right for fear of having it resisted, they would by and by have no right left. They must not only hunt Hares and Partridges, but provoke the Tiger in his forest. They who feared to assert their rights would lose their rights, and by such conduct make that House the slave of the House of Lords. Whenever a House of Commons had persisted in an Impeachment,

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it had always succeeded. He believed the wisdom of our constitution would appear the more it was examined. The House of Commons was not judicial, civil, or military, yet it had all functions, because it had none. It was the watch of the constitution, and corrected its errors. Beautiful in perfection, or something worth, the moment it stripped itself of its power, it would be nothing! salt without flavour, the eff courings of every thing. When the House of Lords had attempted a jurisdiction unknown to the constitution, when they had aimed to exercise judicial functions in the first instance, the House of Commons did not say, "Don't let us differ with the Lords;" the Commons sought a quarrel; they interfered with spirit, they succeeded, and effected a great and happy conciliation. Fear led to procrastination, and where the case required it, cause and person must go together. If they suffered the House of Lords to depart from their province, that House would absorb all the powers of all the great Courts of jurisdiction in the kingdom, the Court of Common Pleas, the Court of King's Bench, and all the Courts in Westminster Hall! After an additional argument or two, Mr. Burke concluded with moving—"That it appears to the Committee that an Impeachment by this House, in the name of the Commons of Great Britain, in Parliament assembled, and of all the Commons of Great Britain, against Warren Hastings, Esq. late Governor General of Bengal, for sundry High Crimes and Misdemeanors, is now depending."

As soon as Mr. Burke had sat down, and the question had been read from the chair, Mr. Erskine rose, and after some very handsome compliments to Mr. Burke, conveyed through the medium of an apology for his own inadequacy to follow an orator of so much eloquence, experience, and ability, in all things relative to that House, proceeded, in a most elaborate argument, to prove that in law the Impeachment *abated*. Mr. Erskine reasoned closely for above an hour, citing all the apposite precedents that the fruitful seventeenth century afforded, and applying inferences and deductions from each case, as they were capital and enforcing, illustrating, and sustaining the argument. At length he was suddenly taken ill, and obliged to break off abruptly in the middle of his speech. Before he sat down, however, he moved, "That the Chairman leave the Chair."

Mr. Erskine was followed by Mr. Addington (the Speaker), who produced a folio MS. of Precedents which he had carefully collected from the best authorities, and which he brought forward as proofs that

according to the Law of Parliament, necessarily considered as a part of the Law of the Land, the Impeachment did not abate in consequence of a dissolution of Parliament. Mr. Addington reasoned upon each precedent as he stated them respectively, with great ingenuity, great force of argument, and apparently much to the conviction of the House.

Mr. Harington said, he should not have intruded himself upon the candour of the House after such eloquence and ability had appeared in the debate, if it had not been to mark the weight of prejudice in his mind, which had been counterbalanced by weight of opinion.

He was not one of the *converts* to whom the Right Hon. Gentleman had alluded, but steadily persevered in the sentiment he had before expressed by act as well as by words, that it would have stamped a mark of infamy upon the Commons of England, if they had not accused Mr. Hastings as a culprit of State from the evidence laid before them. He would make no scruple to add, that if the House should exempt this culprit from any further trial upon his Impeachment and exempt him by the dissolution of Parliament alone, he should in a political view reflect upon it as a calamity of the deepest impression with a reference to that particular Impeachment. He would also admit and profess, with some of the Gentlemen who had preceded him in the debate, that it would be a political evil much to be deprecated with reference to the disability imposed upon the King's right of pardoning an Impeachment as it proceeds, if the King by a dissolution can terminate this mode of trial aimed at a favourite Minister by the public spirit of the kingdom. Yet he would embrace the calamity in both these views, because he would buy them off at the expense of those rights and liberties which he could never separate from a Government by law, and which he was bound with as much firmness to support as the Impeachment of Mr. Hastings, or of other such delinquents, where it could be legally pursued. He was aware of the jealousy entertained in that House against legal analogies, and had no wish to repress it. No man could be more averse to them than himself in Parliamentary debate, if they were technical, or adverse to the genius and spirit of the Constitution.—He would appeal to no such test, but refer the Committee and himself to the *law and custom of Parliament*, by which he understood the general nature of its powers in a liberal view of them—the rights it has affirmed, and the duties it has confessed, by the tenor of its conduct, as well as by its mere authorities of decision. It would be material to delineate, shortly,

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the character which this Constitution had given to the House of Commons and Lords, and it would help to elucidate the point in debate. He was eager to disown the idea given of the Commons by Sir Francis Wilmington upon Lord Stafford's trial, and which the Right Hon. Gentleman (whom they had just heard with so much pleasure) had read with an emphasis that marked approbation, in which the sense of the House had apparently followed him. He refused that humiliating as well as false image, that proceedings in Parliament of this nature were kept alive because the Commons were the same, though with a new representation. This idea insinuated, that the people out of doors were the Commons of England, and the Representatives of the People were their Attorneys or Agents.—It was the peculiar beauty and pride, as he thought, of the English Government in the popular scale of it, that all such Representatives were perfectly independent of the people, and were themselves, during the legal continuance of their powers, the Commons of the Land. It followed from this principle, that the Commons of one Parliament were unfettered by their predecessors, and would never give them credit for proceedings which had not received the sanction of law. It followed equally, that when the Parliament was at an end, their controul over the rights of the subject, and their support of these rights was equally at an end. The idea of taking up an old proceeding *in statu quo*, as it is called, was refused by a fair description of all their powers, and of the limits to which they were confined. If a day was given for attendance, and the day arrived in a new Parliament, the next House of Commons could not act upon it. If the Commons imprisoned for a contempt, the door of their prison was opened, when those who imprisoned were no more. If the Commons, as a part of the Legislature, had framed a Bill, and their Messenger was carrying it up to the Lords, when the King dissolved the Parliament—no future House could proceed upon that stage of the Bill, but the whole was to be taken up again. If such a bill was in the nature of a public charge against a Culprit of State, as in attainder and bills of penalty, the same rule attached upon it; and the Culprit (in effect, though in a different shape) would escape, unless the whole proceeding should be taken up *de novo*, as if it had never been moved one step. In Impeachments, the Commons had a very peculiar character as accusers—they had no judgment either to acquit or condemn any more than other parties who prosecuted. They had no judgment of direction as to the mode of proceeding, or the extent of judicial

powers in the Court at whose bar they appeared, but they had a judgment of disabling, at any period, by their own discretion, all further steps in that Court, and could make it wait for their fiat, whether the justice they had invoked should or should not be carried into effect. The House of Lords fell under the same disability, and enjoyed the same independence in its legislative character. In its judicial, it could not imprison for a day, or a minute, beyond that which closed the Parliament; and he would here deny, that even in Treason, where the commitment was by the House of Lords upon an Impeachment, the custody which remained, or the discretion of bail upon it in the Courts of Law, proved an indefinite power to extend imprisonment for the ends of justice, beyond the duration of a Parliament (as it had been argued), and stated, that in his view they proved the direct reverse. He conceived that the Habeas Corpus Act met the case of High Treason, by considering the original commitment, and the original cause of it as legal or illegal; and that remand, bail, or discharge, had no reference to any supposed controul of the Lords over their Culprit after the Parliament was at an end, by virtue of their inherent powers. He at least contended, that if the commitment remained by virtue of such powers, it applied singly to those cases; and he would ask one question, which in two or three words explained their want of power, to make their own culprit amenable after a Parliament was closed. He would ask what imprisonment restrained Mr. Hastings, or kept him even in the kingdom? He would ask what penalty of bail was a guard over him, or his friends? He would ask if any lawyer (Parliamentary or in Westminster-hall) would assert, that Mr. Hastings and his bail could, upon Impeachment for High Crimes and Misdemeanors, be touched between Parliament and Parliament, by an order of the Lords? Indeed, if they could it would follow, that anciently, imprisonment would or might have been indefinite at the mercy of the King, in all cases of Impeachment for High Crimes and Misdemeanors. If it be said "No; the Courts may remand the culprit or not by their discretion," as it is admitted they can upon Impeachments for High Treason; he answered, "Shew me first the Impeachment upon a charge for High Crimes and Misdemeanors, or even the bail existing after the Parliament; and we shall see what the Courts of Law have done with it." He would state one dilemma very difficult, if not impossible, to be resolved. If the Lords cannot imprison at all, or bail for a time beyond the Parliament, upon Impeachment for High Crimes, and may yet proceed *in statu quo* at

a new Parliament ; the power is a mockery of justice, for they have no prisoner. If they could on the other hand imprison him till the next Parliament, they could have done it indefinitely as long as it pleased the King to discontinue Parliament. If the Courts of Law could interfere in Treason, it proves a disreputation of those Courts which might break in upon the security intended by the commitment, as the act of the Lords. He would say a few words upon two other judicial powers exercised by the Lords—The power of trying Appeals—and the power of trying Peers by removal of Indictment. Upon Writs of Error they could not stir in the next Parliament by the Common Law, if the Error was not reversed or affirmed in the former Parliament. This disability had extended itself even to the case of prorogation in early times. Lord Hale says, in a manuscript written with his own hand (and which Mr. H. had seen), that he was present when the Lords determined that in prorogation Writs of Error abated (unless by special order continued) ; but in 1673 it was first otherwise determined. He affirms, however, that by dissolution of Parliament, the Writ of Error completely abates, and he wrote before 1678. He adds, that he has known it so determined. It is true, that now Writs of Error do not abate, and that in that respect the order of 1678 has been affirmed by usage ; but if the law was originally different, it proves the idea with great force, that “ *in statu quo* ” was out of sight, even upon Writs of Error, and the analogy would in that view of it apply to Impeachments. But he denied the analogy between them, if it is contended, that because Writs of Error do not abate, Impeachments can be taken up *in statu quo*. In Writs of Error the record remains, and so in Impeachments ; but in Writs of Error there is no evidence. And he would ask, If there ever was an instance in the House of Lords, or in the other Courts of Justice, where the new House of Lords, or the new Court, if the original record was before them, carried on the evidence *in statu quo* upon criminal proceedings ? This question led him to another, which he addressed to the Right Hon. Gentleman over against him—Does he mean by the term “ *depending*,” that the Record is in Court, so that Mr. Hatings may be called again to plead ? or does he mean, that the evidence is to go on where it left off ? Ambiguity was to be avoided in such a Resolution ; and he might be of opinion, that in one sense of the word an Impeachment was “ *depending* ” still, and that in the other it was not.

Upon the topic of *precedents*, the first important fact that struck him was this :—From

the time that Impeachments began, down to the year 1678, not *one* instance was to be found of an Impeachment continued by the next Parliament.—It was probable, he admitted, that some of these earlier Impeachments were closed within the Parliament that first adopted them, but the Committee would recollect how very short the continuance of each Parliament used to be in those periods.—It might therefore be fairly supposed, that many of these proceedings died a sudden death by the King’s power in terminating the Court.—It would as little be forgotten, that most of the intervals between one Parliament and another, were extremely tedious, which is a fact that would account for the policy of the constitution in liberating the victim from custody, if the other alternative should have been to keep him in prison for an indefinite period.

However, the case did not rest there ; for instances before 1678 occur, within the reigns of Charles the First and Charles the Second, where Impeachments in fact were at an end, if not in Law, after the Parliament was dissolved before judgment.—He would here have the candour to admit that such an actual end of an Impeachment, thus interrupted by an end of the Parliament itself, might have arisen from the inexpediency of carrying on the old prosecution.—Yet he would mention two cases in which it struck his mind forcibly, as if the Lords and Commons had supposed the Impeachment legally at an end upon the dissolution of the Parliament.

One of them was the case of the Duke of Buckingham in the second year of Charles the First. When that minion was the just object of popular indignation, the Commons impeached him, and pending the Impeachment the King dissolved that Parliament, evidently for the purpose of defeating this challenge upon the justice of the Lords.—In the mean time the King extracted the Articles of this Impeachment, made them Articles of an Information against the Duke in the Court of Star Chamber, and stopped that proceeding, upon the colour of being satisfied by the evidence that he was innocent.—This conduct was clear notice to the Commons, that the King looked upon the Impeachment after a Dissolution as a nullity.—The next Parliament was convened in a very little time after that manœuvre, and we hear no more of the Impeachment, nor is any complaint suggested against the insult upon the Commons, though in that light it would have been viewed if the Impeachment had been depending.—Was the Duke less execrated by the Commons ? Had he corrupted them ? Had the King enslaved them ? Were they ignorant, or cold

in the seat?—The Duke was more detested than ever—the King was at their mercy—and they were as great men as any that ever lived.—But nothing more needs be said of them than that, in that very year, they obtained the second Magna Charta of England in the *Petition of Rights*; above all, it should not be forgotten that Sir Edward Coke was in that Parliament converted by disappointment into an active Patriot, and enabled, by his deep knowledge of the law, to put the most effectual checks upon every usurpation.

Another instance occurred in 1665, of Drake impeached for a libel. The Lords direct, that in case of a dissolution, he should be the object of prosecution by the Attorney General in the King's Bench—Why?—Could not Imprisonment for the interval have satisfied their spleen? and would not it have ensured the Culprit when the next Parliament should meet? The order for prosecuting by the Attorney General after a dissolution was illegal; but the suspicion that gave birth to it appears to have been that he would else have escaped—and that neither imprisonment of him, nor bail, would have been legal between that Parliament and the next. The Right Hon. Gentlemen who had spoken last had said, that prior to these periods, instances were to be found of proceedings in Parliament against Criminals of State, though not in the form of Impeachments, extended, in fact, from one Parliament into the next. But as far as these obsolete precedents went, this at least appeared: 1st. That special orders were deemed necessary to continue the charge which necessity admitted, that without special orders it would have abated; and, 2dly, That unless it appeared the charge was acted upon in *statu quo* after evidence heard, it would not reach what he supposed the object of the Resolution at present in debate—namely, the power to go on against Mr. Hastings just where the Managers had left off.—Mr. Hardinge then took up the celebrated case of Lord Danby in 1678, which, according to the Right Hon. Gentleman, had matured the seeds of this continuing Impeachment, and had rooted that strong plant of the constitution by a law that never could be shaken.—He would first, presuming to differ with him as to the character of those times, represent them to be what every sound Historian had called them, times of popular fury and persecution. It had been said, “Yes, but the Lords and Commons were quarrelling when that Parliament began, which resolved that Impeachments were in *statu quo*. It was therefore a reluctant evidence wrung from the Lords by the public spirit of the Commons, in favour of their constitutional

Right.” The answer is, that at this critical period the Lords and Commons were united, and equally violent against the Popish Plot, or against the Minister, then disgraced; that Lord Shaftesbury and the malcontents of the day had forced themselves upon the Cabinet, and governed this very Committee, whose Chairman was Lord Essex: These being the actors and the views, the act was in character. It should speak for itself, and he would prove to the Committee as a mere Historian, that it was full of truck—that it shunn'd the light—and that it *made a new Law* without reason, precedent, or analogy, even alleged. The Lords were first reminded of the Impeachments—and what course do they take? They refer to their Committee an enquiry upon two points which are distinct; one, as to the Law respecting the continuance or abatement of Appeals and Writs of Error, without apparent occasion for it; another, as to the *fact* respecting the particular *fact* of the Impeachments made in the former Parliament. The answer given upon the following day is perhaps as curious a passage as any upon the Records of Parliament, and vitiates the whole proceeding engrafted upon it. They report, that upon their view of a *Judgment* by the Lords in 1673, Petitions of Appeal and Writs of Error were in force to be acted upon: they add (as it appears by Sir Thomas Raymond's Report), that the Papers contained in that Judgment of 1673 are too voluminous. In a distinct sentence, after stating the Impeachments to be upon special matter assigned, they give their opinion to a point of Law as to which they had never been interrogated, and at one stroke affirm that opinion to be, that all those Impeachments were in *statu quo*; not in reference to the Judgment of 1673, nor with a single ground of any kind, either stated or insinuated. Both parts of the report are then adopted by the House, who never appear to have looked at this Judgment in 1673; but give their Committee ample credit for a candid statement of its effects upon Writs of Error. Who would have entertained a doubt, upon this report, that in 1673 the Lords judicially had affirmed the Law by which Writs of Error were to continue after a dissolution? But when the *Judgment*, as it is called (which is only a Resolution of the Lords upon a reference to their Committee), is brought forward it appears, that no question was put or imagined respecting *dissolution* of Parliament, with a reference to Writs of Error; but the point had been raised, whether if *prerogation* had intervened, those Writs were at an end. If he should be told “*prerogation* was the same as *dissolution* of Parliament

Parliament in principle," he would refuse as well as deny that proposition to be Law, under the wings of Lord Hale, who died after 1673, and before 1678. In the Manuscript of his which Mr. Hardinge had before mentioned, that great man alludes to the resolution of 1673, as correcting and reversing the Law of a former Judgment (made by the Lords in his hearing, and in that same Parliament), that even upon prorogation Writs of Error abated: but was *he* (Lord H 1) of opinion, that *prorogation* and a *dissolution* of Parliament were the same as to Writs of Error? So far from it, that after seeming to adopt the decision of 1673 as good Law, he proceeds to affirm, as a point clear of doubt, that after a *dissolution* of Parliament, the Writ of Error and Petition of Appeal was at an end; adding, that he has himself known it so ruled. Here then we detect an insidious concealment of the fact by these Lords in 1678, as to the import of that Judgment in 1673, and at the best a perverted analogy between two cases which the existing Law had completely distinguished.—But the opinion asserted in the next breath by these Lords as to Impeachments could not be justified even by that Judgment, if the first analogy between a prorogation and a dissolution had been correct, because there is no fair analogy between Writs of Error and Impeachments after a dissolution of Parliament, one of them containing mere points of law upon the face of the record, the other containing an accusation upon fact. In one of them, the public accuser, who has a discretion to interpolate before judgment, is dead, and in the other no Plaintiff is charged, but the same parties appear. The Right Hon. Gentleman had said, "that in some of the references by the Committee in 1763, though it certainly was not in strictness the point before them, precedents appeared of Parliamentary accusations which originated in the House of Peers, and were continued by order from one Parliament to the next." He would not again answer that observation, but ask, If it was *clear of doubt* that such precedents were decisive to establish the legal continuance of Impeachments *in statu quo*, without special orders, and where the evidence had proceeded? In character with such a mode of declaring or making law as that in 1678, was the subsequent conduct of those times: nothing could be more base or infamous than what happened in the case of many persecuted Catholics, whom the Judges, and Scrivens at their head, executed against all the rules of law and principles of justice. In character with such a law, and so made, was the course of an Impeachment against Lord Staf-

ford. Here, indeed, the humanity of the Right Hon. Gentleman and his candour uniting, he had conceded that nothing could be worse; but it was the same House of Peers, with little variation, and at the distance only of two years. The Right Hon. Gentleman had said, "these were abuses of a writ and constitutional Judgment in 1678," made by the same Judges however, and with an equal spur to that persecution of the Catholics in which Lord Danby was implicated (by a side wind) as well as the Popish Lords then under Impeachment;—but this trial of Lord Stafford is of extreme importance in marking what shame was felt upon the judgment in 1678, and in what manner the exonerating of it was eluded. Jones, Maynard, and Winnington say, "The Lords have passed a Judgment. It is too clear to be disputed. We are to suppose they had good reason for it; we are to suppose they had precedents: but if they had none, it is proper to make a new precedent;" that is, proper to make it by taking away Lord Stafford's life. The Earl of Danby, in 1682, accuses the Peers of *blowing up their own ears*, by refusal of a Bill that would have enacted it into a law. Then comes the reversal in 1685 of this Resolution: so that authority against authority, the last prevails; and it is now the law of that Court, that Impeachments abate after a dissolution of Parliament. This period of 1685, the first year of a short and wicked reign, deserved all the odium a more enlightened age had thrown upon it. The reversal was indecent, in the mode of it, partial in the object, and hurried through the House. But there was a remarkable distinction taken by this reversal between Writs of Error and Impeachments, and that part of the order which relates to Writs of Error has been since received as the law of the land. It would prove the other part respecting the Impeachments had been recognized and adopted by subsequent authorities in the Lords, without a hint of disapprobation by the Commons. It was not, however, quite correct, that the Commons were *then* completely enslaved; Serjeant Maynard was a host in favour of liberty, and then a Member of Parliament. He had been a champion for the order of 1678 against Lord Stafford; but in 1685, though in the habit of protesting against many encroachments, he says not one syllable against this order of reversal, which negatives the continuance of Impeachments after a dissolution of Parliament. In 1690 the times were excellent, and perhaps a better era for the liberty of the subject could not be found than in that identical year. Maynard was in the House of Com-

mons, and Somers then Solicitor General, the best and greatest man that perhaps ever breathed in England, or in the world. A question is directly put by the Lords, Whether Impeachments continued, or abated, upon a dissolution? All the old precedents are examined, and many others that were not produced in 1673, are brought from the Tower. They are all *stated*, nor concealed, as in 1678. The Committee intimate their sense of the law to be, that Impeachments are at an end upon a view of those precedents, and upon a view of those precedents the question of discharging the Peers is expressly put. It is true, that politics had their share in a debate which this report produced, and that the Lords had not raised the point themselves, but had started another in their favour. It is, however, certain that a debate arose upon this report, and he despaired of all attempts to reason in future, if he should be accused of an unfair inference from the dissenters marked in a famous protest against the Resolution of the Lords to discharge the Peers. But first he would ask, What became of the House of Commons, when they saw the report affirming Impeachments to be at an end, and when they least knew it had been a point in the debate? And when there was at last ambiguity in the question, Whether the discharge was upon this ground or the other of the pardon? they urge nothing in favour of the order in 1678. — But what says this famous protest? Is it silent upon the report? No, it condemns the introduction of it into the debate, but not the doctrine which it imported, and it imputes a design beyond that of relieving the Peers who had petitioned. This design is explained in Burnet as having been to save Lord Carnarvon, against whom his enemies had raised the question again for the purpose of exposing him to an old Impeachment that hung over his head, unless the dissolution had made an end of it. The enemies of that Peer were busy against him in the Commons, and it was proposed at this very time to vote, that upon account of the Impeachments in a former Parliament, he should be no longer one of the King's Cabinet Ministers. Yet his enemies, aware of their own purpose in the Lords, and aware of the measure by which it had been met there, make no complaint against the danger, at least of the order in 1678; if it could have been supposed that it was not then done away by the order in 1685. In 1717, Lord Oxford was made subject by a Resolution of the Lords to an Impeachment after prorogation, and he could not imagine it possible to read the dissenting Lords in their Protest, without a necessary inference, that the point of the question had been, Whether

if dissolution abated, prorogation had or had not a similar effect? This question assumed the law of abatement, as resulting from dissolution, and the Lords in their protest, never controverting that law, but affirming and commending it, express their fears that it may be weakened by this judgment upon the case of prorogation, which they represent as the same thing: but the majority thought otherwise, and it is impossible to conceive that judgment either supported in argument, or in argument arraigned, unless upon this point conceded, that a dissolution of Parliament was the termination of an Impeachment. Upon this view of the several precedents, he expressed a very serious doubt, at least, whether Impeachments could be taken up *in statu quo* by a new Parliament; and he could not help adding, that if all these precedents were thrown into the fire, a fate which upon the mere character of the times two of them deserved, he should have a doubt at least, and should incline to the opinion he had already intimated, as resulting from the constitutional powers residing in both Houses of Parliament, by admitted practice and general illustration. He adjured the House to act upon the recommendation of the Right Hon. Gentleman who spoke last, as well as to admire it; in other words, to be deliberate and wary in examining all the materials which could enlighten their judgment, before they affirmed in the form of an asserted privilege a judicial duty of the Court, whose jurisdiction they could not change, and whose judgment they could not force. He intimated a dislike to *this* mode of asserting the right, even if they believed it was clear, but recommended that if that should be their opinion, they should act upon it in a mode of asserting it equally effectual, but less irregular; more temperate and more constitutional. Thinking however as he then did, he should certainly give his vote in support of the Motion, that Sir Peter Burrell should leave the chair, in order to the appointment of a Committee (by the House when returned) for the purpose of examining precedents.

Mr. Yorke recommended great deliberation on a constitutional question of such magnitude, and advised that more time should be given, that Gentlemen might be the better enabled to search for precedents, and make themselves matters of the subject.

Mr. Anstruther with infinite ability, in an argument of an hour's length, sustained the popular side of the question, viz. That an Impeachment did not abate on the Dissolution of a Parliament. It was acknowledged by men highest in the profession, that Mr. Anstruther's was a most excellent speech.

As soon as Mr. Anstruther sat down, Mr. Pitt rose and said, he did not rise to enter into the debate, but to make a proposal that he flattered himself would prove generally acceptable. If he were to state his opinion then, Mr. Pitt declared, he should say, that it was so clear as not to make it fit to have it entered on their Journals, that they thought it necessary to appoint a Committee to search for precedents, from whence an inference might be drawn, that they had entertained doubts, of the slightest probability of which they ought carefully to avoid the appearance. The question before the Committee, Mr. Pitt said, was of such magnitude and importance, it related to a right that formed so essential a part of their privileges, and involved considerations so intimately interwoven with the permanent foundation of our Constitution, that all must be desirous to have an opportunity to give it a full and ample discussion. When he recollected the number of Gentlemen who would speak upon the subject, and who had not yet had an opportunity of being heard; it was also well known that those who were considered as the first legal authorities in that House meant to deliver their sentiments, and as the time of night would not then allow a sufficient opportunity for them to enter at large into the discussion, he thought the most convenient method they could pursue, would be to adjourn the debate till a future day; they would by that means have the advantage of affording those Gentlemen who wished to search for precedents, time to consult the necessary documents, and compare the variety of cases cited by his Right Hon. Friend that day, with the history and circumstances of the times in which they had occurred. When they should come again to the discussion, the Hon. Gentleman opposite to him, he hoped, would also be able to resume the thread of that learned speech, which for a reason that they all lamented had been abruptly broken off before it was finished; and in every point of view the debate would benefit by the delay. Mr. Pitt concluded with declaring, that he flattered himself that after the subject had been fully discussed, they should come to an unanimous vote on the question before them. In order to carry his proposition into effect, he moved an Amendment to Mr. Erskine's motion, to add to the question, "That the Chairman do leave the Chair," the words "report progress and ask leave to sit again."

Mr. Burke rose and said, he perfectly agreed with the Right Hon. Gentleman, and thanked him for the suggestion.

Sir John Scott begged to ask the Right

Hon. Gentleman a question relative to the wording of his Motion. The Right Hon. Gentlemen had stated in it that the Impeachment was now *depending*; did he mean that it was *depending* in all its forms, or in other words *in statu quo*, as it depended before the dissolution of the last Parliament? If so, Sir John said, the question seemed to him to be substantially different from the mere consideration whether the Impeachment abated, and must be renovated by a particular process elsewhere, not necessary to be then described.

Mr. Burke said, he should entertain a very great respect for every thing that fell from the learned Gentleman, and would cheerfully have given an answer to the question he had before asked to the same point, but that he was unwilling to keep the House from enjoying the satisfaction they must have felt from having heard the able speech from the learned Gentleman near him, one of the most able, Mr. Burke said, that he had ever witnessed. With regard to the word *depending*, introduced in the Motion, he could assign no other reason than that it was the very word used in the Resolution sent up to the House of Lords in the case of the Earl of Danby, and therefore he thought it the proper word to use on the present occasion.

Sir John Scott said a few words in reply.

The Matter of the Rolls thought the word *depending* wanted some explanation, and suggested inserting after it in the Motion, "in all the forms in which it existed in the last Parliament."

Mr. Fox said, they had got into a most curious conversation; that the explanation suggested by the Master of the Rolls would go a great deal farther than would be proper, whereas the word *depending* was sufficient to denote their sense of their own rights, and it would be for the House of Lords to put a construction upon it.

Mr. Burke said, considering this was the first step the House of Commons was about to take in defence of their Privileges, the word *depending* was enough for them to use at present, not thinking they were ripe enough to go farther as yet; but that if he were asked what he meant, he had no scruple to declare, that his meaning was, that the Impeachment was *in statu quo*, for that he believed was the proper phrase. When they had carried up the Question to the Lords, supposing that the majority of that House should agree to vote it, the next step the House would have to take, must depend altogether on the conduct of their Lordships.

The Question was at length put, and carried.

Adjourned.

WEDNESDAY, December 22.

As soon as the order of the day for taking into further consideration the state in which the Impeachment of Warren Hastings, Esq. stood at the dissolution of the last Parliament, had been read, and Sir Peter Burrell had taken his seat at the table,

Mr. Erskine rose, and after an apology for having attempted to deliver his sentiments last Friday without having been able to accomplish his purpose, said, he did not wish the House to begin with him *de novo*, but should as well as he could recollect pursue his argument, resuming it where he had unfortunately been obliged to leave off; and as he happily felt strength of body as well as of mind, he trusted he should be able to bring it to a conclusion, to the conviction of the House, that Impeachments abated upon the dissolution of Parliament. Mr. Erskine paid many compliments to Mr. Addington, for his ingenious argument on the great variety of Precedents he had cited last Friday; and professed much respect for his talents and his motives, since nothing could be more praise-worthy than to see him gratefully returning the distinguished favours with which the House had honoured him, by standing up, in an able and manly way, the advocate and supporter of their privileges, and the customs and usages of the House which constituted the Law of Parliament; but he must be permitted to say, that powerfully as the Right Hon. Gentleman had put the cases he had quoted, they had not convinced his mind that an Impeachment did exist *in statu quo*, notwithstanding a dissolution of Parliament. Mr. Erskine stated a variety of Precedents from the Lords' Journals, in order to establish the truth of his assertion, and to prove that the House had never conceived that a Writ of Error continued over even after a Prorogation, much more a Dissolution. Mr. Erskine dwelt on the force of each Precedent for a considerable time, and said, one of the most important he had heard of from a learned friend since he came into the House, and which he had not before met with. It had, he said, astonished him, and he doubted not it would astonish the House, as it had astonished him. The precedents Mr. Erskine cited were those of the year 1673, 1678, 1685, 1690, 1701, and 1717. He pathetically described the trial, defence, conviction, and execution of Lord Stafford; and after a variety of reasoning upon each, and all the relative circumstances, he took a more immediate view of the case of an Impeachment situated like that of Mr. Hastings at present, with many of the accusers become Judges. He asked how they would get at this oral evidence, and by what

means ascertain the testimony of various kinds which the Managers of the late House of Commons had produced, and which had been admitted by the House of Lords. Having used many arguments in illustration of his position, to prove the injustice of continuing a trial so circumstanced, he at length concluded with a repetition of his former motion.

Mr. Pitt desired the attention of the Committee while he stated his opinion upon a subject which involved in it considerations essential to the very existence of our constitution. The first thing that naturally presented itself as proper to be sought after, in examining the grounds upon which such a Question must stand, was the ascertaining whether there had existed one uniform usage and practice which had been pursued by the two Houses in respect to Impeachments, and which would in that case have constituted the law of Parliament; but if it should appear that the precedents to be found did not always apply, it must be remembered that there were principles that were paramount to all precedents, viz. the principles of the constitution. If he should have found that the uniform usage and practice of Parliament clearly was, that Impeachments did abate on the dissolution of Parliament, he must bow to the authority, and had only to look to an early remedy for a practice so dangerous to the privileges of that House, and to the liberties of the country. After an exordium somewhat to this effect, Mr. Pitt proceeded to examine the several precedents alluded to by Mr. Erskine, and asserted, that there were to be found a variety of others in our history which warranted the doctrine that Impeachments did exist *in statu quo*, notwithstanding the dissolution of Parliament. Mr. Pitt instanced the case of the Duke of Suffolk in the reign of Henry the Sixth, and said, others occurred in the time of Richard the Second, and in other reigns. He dilated on the Resolution of the House of Lords in 1673, wherein they ordered that all Writs of Error and *other business of a judicial nature* shall go over from Parliament to Parliament, notwithstanding a dissolution. He next adverted to the precedent of 1678, the authority of which he charged Mr. Erskine with having endeavoured to overturn by eloquence, and by his artful appeal to the passions in the description he had given of the conviction and execution of Lord Stafford; but that unfortunate nobleman's hard fate was certainly no proof of the non-continuance of Impeachments, as the abuse of an institution was no argument of its inutility. He afterwards went to the counter-decision of 1685, which had taken place in bad times, when a Popish

Monarch was on the throne, and the object had been to screen the Popish Lords from justice. Mr. Pitt shewed the distinction between a judicial and a legislative proceeding, maintaining that Impeachments clearly came within the Order of 1673. Having shewed that the weight of the Precedents was in favour of the Motion, that the Impeachment was depending and did not abate, preponderated when balanced against such as were of a contrary tendency, he referred to several cases in Carthew's Reports, to prove that it had been long since held, that Impeachments were not affected by the dissolution of Parliament. He took notice of Mr. Birkene's having called that House the Attorneys or Agents for the People, and said, in one sense they certainly were so, viz. as deputed by them and acting in aid of their cause, according to their own judgment and without any responsibility whatever. If it was meant, that they were to be always at the direction of the People, he should say, they were not in that sense the Attorneys of the people. The Hon. and Learned Gentleman seemed to consider the Impeachment as the particular act of the last Parliament, forgetting that they had impeached a State Criminal in their name, and in the name of *all the Commons of England*; the proceeding therefore having once assumed a judicial shape, its existence must continue, without regard to those who had immediately instituted it. To illustrate this, he put the case, that his Majesty's Attorney General were to file an information *ex officio* against any man in the King's name, and were prevented to the trial to go out of office. In that case, was it to be imagined that the information would not be tried? The King was in fact the Public Prosecutor, and the Attorney General only the legal organ of instituting the process, in like manner as the House of Commons was the legal organ of instituting an Impeachment; but all the Commons of England were the Prosecutors. If our Ancestors had foreseen such attempts to overturn the privileges of that House respecting Impeachments, they could not have acted with more caution than they had done, to lay down distinctly what those privileges were. Lord Hale, he said, had stated the distinct difference between proceedings of pure judicature in the House of Lords, and proceedings in that House when they were obliged to act in concert with the House of Commons. He read the passage to the House. He also referred to Lord Chief Justice Comyns, whom he stated to be not only a diligent compiler but a great authority. He read what Lord Chief Justice Comyns said on a dissolution of Parliament, from whence it was evident that an Impeachment by the House of Commons was not affected by a dissolution. Mr. Pitt

therefore said, he trusted he had proved that the weight of Precedents on the Lords Journals was clearly in their favour, that all the great Law authorities were in their favour, and that the course of proceeding in the Courts of Justice was likewise in their favour. He dwelt for some time on the use of Impeachments, as the only mode of punishing State Delinquents who had abated some public office, and whose crimes could not be reached by any other process; and he also said, it must be clear to every one that Impeachments were important as a check on bad ministers, and those who enjoyed offices under the Crown. At length, after an infinite deal of shrewd reasoning and powerful argument, Mr. Pitt came to that part of his speech where he thought it necessary to notice what Mr. Birkene had said of the alterations that occurred in an Impeachment continued for years, and the difficulties that thence arose. He said, the circumstances of the accusers occasionally becoming the component part of those who were the judges, was not a matter of objection against an Impeachment that continued for years, any more than it was matter of objection against an Impeachment that continued only for a single session. It was in fact a circumstance incidental to the nature of all Impeachments, nor was any danger or injustice to be dreaded from it. He asked what was the foundation of the House of Lords itself? It was a Court of Judicature changing its Members, as death took off some, which naturally produced others as their successors. With regard to the evidence, the Lords, he said, had ordered copies of the evidence to be printed, and such as were new Members of their own House would only have to refer to the Journals of the House of Lords, supposing it to be true that they were really ignorant of any of the proceedings already had upon the depending Impeachment. It was, he said, impossible for the House to be governed by the rules of the Courts of Law, since the foundation of Impeachments was to bring offenders to justice, who would escape if submitted to the ordinary rules of Courts of Jurisprudence; the rules of the Courts being for the protection of individuals, and Impeachments for the protection of the public. After clearing away Mr. Birkene's objections stated in the latter part of his speech, Mr. Pitt declared he would, before he sat down, say something, not only to prove that Impeachments did not abate on the dissolution of Parliament, but that they continued *in statu quo*, exactly as they were before that event took place. He then entered shortly into a discussion of the nature of proceeding on an Impeachment; and having argued it very clearly, with a view to establish the doctrine, that if it was taken

taken up in any other way than *in statu quo*, the consequence would be, the most intolerable oppression and the most violent injustice. He concluded with asserting, that from every principle of the constitution, from the weight of precedents, from every analogy of law, from the immutable principles of justice, from the expediency of Public trials, from every authority to be found, and from every argument that plain sense could suggest, he was decidedly of opinion not only that the Impeachment did not abate, but that it existed *in statu quo*; and therefore he declared, he never had given a vote with more confidence than he should give his vote for the original Motion moved by the Right Hon. Gentleman.

The Master of the Rolls * began with confessing himself utterly unable to follow his Right Hon. Friend through his argument, which had been one of the most able and eloquent that he had ever heard; he begged the House to know, therefore, that he rose only because it would naturally be expected, that every Gentleman of his profession would say something upon a question of such great constitutional importance. The Master of the Rolls then said, he wished that the Right Hon. Gentleman who had moved the question had followed the example of the House of Commons in the case of Lord Danby, and had described in the motion more particularly what was meant by the Impeachment that was stated in it to be depending. His Right Hon. Friend, it was true, had fairly explained himself on that head, and had declared, that in his opinion the Impeachment depended *in statu quo* just as it had done at the conclusion of the last Parliament. He professed a great esteem for the Right Hon. Mover of the question; but he must say, that according to clear law and every legal analogy, it was impossible that Impeachments could exist *in statu quo* after a dissolution of Parliament; nor till the year 1678 had it ever entered into the mind of man, that a dissolution did not put an end to every existing Parliamentary proceeding.—With regard to Evidence, there was not, the Master of the Rolls said, one rule of evidence that did not apply to the House of Lords as much as to any inferior Court in the kingdom. The Master of the Rolls differed from Mr. Pitt in several of his deductions; and as to the case of the Duke of Suffolk, he said it was an extraordinary one to look to as a precedent. That noble Duke had been banished, and his enemies, not thinking that a sufficient punishment, moved an Impeachment in that House; but it was not true that a trial had begun in one Parliament, and continued in the next. While

these proceedings, however, were going on at home, the noble Duke lay dead in France. The Impeachment of Mr. Hastings was the first instance of an Impeachment in which the trial had lasted beyond the session, and he sincerely hoped it would be the last. Sir Richard argued for some time on the precedents.

Mr. Yorke wished more time had been allowed to search for further precedents. The question had, he said, been argued so ably by the Right Hon. the Chancellor of the Exchequer, that it would become unnecessary for him to attempt to go into the discussion; it was sufficient for him to declare, that it appeared to him from reason and common sense that Impeachments were not discontinued in consequence of a dissolution of Parliament, since it was founded in principles of justice that the accused should have an opportunity afforded him of clearing his character and making his defence, which he could not have, if the Impeachment were to abate. Mr. Yorke replied to several of the arguments of Mr. Erskine and the Master of the Rolls, controverting them separately, and stating why he differed in opinion from them upon the points in question. He said, he thought the House of Lords could not proceed to judgment unless the House of Commons prayed it; in like manner as the Court of King's Bench, on a conviction of a criminal Information or Indictment preferred by the Attorney General, would not give judgment until the Attorney General came into Court and prayed it. The Right Hon. Chancellor of the Exchequer had shewn, Mr. Yorke observed, that Writs of Error had continued from time to time, notwithstanding a new Parliament. In ancient days the Parliament was dissolved, or expired, at the end of a single Session; but as Election Petitions and other public business increased, it had been found necessary to increase the term of the duration of Parliaments. Mr. Yorke defined the distinction of the rules of proceeding in the Courts of Law and the Court of Parliament; in the former, the whole power of the Court was derived from the Crown; in the Court of Parliament, all the power was derived from the people and not from the Crown. Mr. Yorke made some other pertinent remarks.

The Attorney General † reasoned very ably in support of Mr. Erskine's Motion, and contended, that if opposing the original question was to abandon the Privileges of that House, sure he was, it was to act agreeable to the law of the land. Mr. Attorney entered into a discussion of the case of Lord Stafford, and gave an account of the conduct and arguments of Serjeant Maynard and Sir William Jones on that memorable occasion.

* Sir R. P. Arden,

† Sir Arch. Macdonald.

Sir Archibald, after dwelling on those topics for some time, said, he could not but be of opinion, that a farther enquiry was necessary, and therefore he should think it his duty to abstain from giving his vote for the original question. When precedents should be found, they ought then to sift the subject to the bottom, and ascertain what was the mode most expedient and proper for that House to pursue.

Mr. Robinson made a short speech, but we did not hear what he said distinctly enough to learn on which side he meant to give his vote.

Mr. Pybus, in a speech of great perspicuity and appositeness, supported the original question, for which he declared he felt himself bound in honour to vote. Lord Danby's case in 1678, Mr. Pybus said, was peculiarly that sort of case that best of all elucidated the great advantage of Impeachments by way of security to the constitution. Charles the Second, upon the Commons proceeding to impeach Lord Danby, then the Lord Treasurer, came down to Parliament and said, in plain and direct terms, that he was resolved to protect Lord Danby, who had acted uniformly by his directions and orders, and Lord Danby afterwards pleaded the King's pardon, so which his Majesty had himself put the Great Seal. The House, with a becoming spirit, refused to admit the plea, being conscious that the King could do no Act of Government himself, because there was no responsibility annexed to the royal character; they therefore persisted in their Impeachment; when the King, finding he had no other resource, had recourse to his Royal Prerogative and dissolved the Parliament. Mr. Pybus asked, Of what use was the privilege of Impeachment, if the Monarch could thus unconstitutionally interpose his prerogative, and secure from justice his corrupt and abominable favourite? He thanked God the present time was not the days of Charles the II^d, but that House were not to be so self-interested as to look to themselves only; they were to act upon a more extensive scale, to look to futurity, and take care to preserve posterity from the danger of being deprived of the blessings of a free constitution. He mentioned, that the noble stand made by the Commons in the case of the Earl of Danby had since received the solemn sanction of an Act of Parliament. He need scarcely say, he alluded to the Act of the 12th and 13th of William, by which the King was deprived of the power of granting a pardon to any person impeached by the House of Commons.

Mr. Adam rose next, and said, what he had heard was sufficient not to leave a doubt in his mind, that then and at no other time ought make their stand and ascertain the

clear principles of the constitution. His Right Hon. Friend, Mr. Adam declared, had truly said, that they were a Grand Committee of Privileges and of Justice. He did not then mean to detain them by entering into a discussion of the precedents, which had been so well discussed already; he would only observe to them, that in the Resolution which was entered into by the Lords in 1673, they would find the foundation of all the precedents that came afterwards. Mr. Adam said a few words on the precedent in the reign of Henry IVth, and the precedent of 1673, and argued from Lord Hale and from Forster's Reports, declaring, that if it were not so late an hour he should have gone more at large into their consideration, but at present he would only say a very few words. Mr. Adam then commented for some time on different parts of the subject, and at length concluded with declaring he should give his vote for the original question.

Mr. Serjeant Watson, in a short speech, said, he had listened attentively to all that had fallen from the different Gentlemen, in the hopes of being able to have the doubts he entertained respecting the original question removed; but though he had earnestly endeavoured to be convinced, he could not get over his doubts, which obliged him to think that the idea of an Impeachment not abating with a dissolution, was contrary to the law of the land. The Serjeant adverted to the precedent of 1701, and made several observations respecting it. He concluded with expressing a wish that a Committee should be appointed to examine into the Journals of the House of Lords, and report precedents more at large.

Mr. Pitt proposed to adjourn as before, but to ask leave to sit again next day, as several Gentlemen had not yet had an opportunity of being heard.

At nearly three in the morning, the Committee adjourned, and the House also adjourned immediately.

THURSDAY, December 23.

As soon as the order of the day for taking into further consideration the state in which the Impeachment of Warren Hastings, Esq. stood at the dissolution of the last Parliament, had been read, and Sir Peter Burrell had taken his seat at the table,

Colonel Simcoe rose, and spoke at first in so low a tone, that we could not collect what he said; in a few sentences, however, he raised his voice, and we understood him then to say, that he had formed his opinion rather from reason than from precedents; that he had listened with great pleasure to the very able and eloquent speech that the Committee had heard the preceding day from the Right Hon.

Hon. Chancellor of the Exchequer, and felt conviction from the force of his arguments, and the additional light he had thrown upon the whole subject. He had no scruple to declare, therefore, he was of opinion that the Impeachment either was, or ought to be depending. He said he gave this opinion independent of any predilection for our Asiatic territories: he had ever turned from them with an averted eye, and uniformly considered our possessing them, at best, but as a precarious usurpation. He added a few other emphatic sentences on the subject, and then took notice of the manner in which the Right Hon. mover of the question under the consideration of the Committee, and for which he meant to vote, had thought proper to treat a worthy friend of his on the first day that the subject of the Impeachment came regularly before the House. Without giving any answer to the arguments of the Hon. Gentleman, or saying a syllable relative to the Journals on the table, which the Hon. Gentleman had charged with containing Resolutions contradictory to each other, and which the Hon. Gentleman had started to be the reason that had induced him to alter the opinion he once had entertained of the Impeachment of Mr. Hastings, and to oppose the Chairman's leaving the chair, the Right Hon. Gentleman had chosen to hold out intimidating language to the Hon. Gentleman and to the House in general, to charge the Hon. Gentleman with having put on a suit of cast-off cloaths, and to have become a *convert*. If his Hon. Friend was a convert, the Colonel said, he would tell the Right Hon. Gentleman the reason. It was, because of that Right Hon. Gentleman's own *conversion*; it was because he had thrown off the cloaths that he had so long moved in, and at length put on the true constitutional dress. He wished the Right Hon. Gentleman joy of his new garb, since the robe of truth became him better than the raiment of Rome or of Greece; might the mantle long continue to cover him! After pursuing this metaphorical allusion as far as it would go, Colonel Simcoe repeated his admonition, and hoped the Right Hon. Gentleman would not again hold the language of menace to respectable Gentlemen, who acted upon the most disinterested motives in that House, and, without pretending to vie with men of superior abilities, were contented to do their duty honestly and conscientiously to the best of their judgement.

Mr. Burke began a very long, entertaining, witty, and yet in many parts of it an argumentative speech, with replying to the allusions of Colonel Simcoe, relative to his having, on a former day, charged Mr. Bask-

ard with turning his coat, and becoming a convert. Mr. Burke assured the Hon. Colonel, no man was less skilled in dress than he was; he knew scarcely any thing of the colour, shape, quality, fashion, and goodness of the cloth of the coat to which the Hon. Colonel alluded; if, however, the Hon. Gentleman, or his friend, could produce a pattern, and wished for any thing out of his ward-robe, they were welcome, though he feared they would find it but poorly stocked. After playing for some little time upon ideas which a fanciful imagination can easily suggest, and making free with the cut of what he had termed the Colonel's Uniform, Mr. Burke said, there was no conversion in him; but if any man said, that Impeachments were in the power of the Crown, he would say, that such a man was subverting the constitution. That, Mr. Burke said, was his menace; and what was more, it was a menace that he should persist in. Nor did he imagine that by suggesting such an opinion it was possible to give offence to any one Member of that House; on the contrary, he should have thought they would have been pleased with a declaration in which the Members of the House had so great an interest, and were so immediately concerned. The Crown, he was happy and proud to repeat, had not the power of non-suiting all the Commons of Great Britain; the safety of the Constitution depended essentially on the Law of Parliament, which was the primary law of the land, and reason dictated that no law should exist contrary to it. He said he had attentively listened to every thing that had been advanced for and against the question, and he owned, he was astonished to find, that the lawyers had not brought a single instruction with them for the use of those who were laymen. He complimented the Chancellor of the Exchequer for the speech he had made the preceding day, which, he declared, had never been excelled for eloquence and conviction within those walls; but he was amazed and grieved at the speech of an Hon. Gentleman (Mr. Erskine) who sat on the same bench near him, but who in constitutional opinion and sentiments was as far distant from him as from pole to pole. His Hon. and Learned Friend had, however, given the solution; he had on a former day declared, that he was not at home in that House; the same might by appearance be said of most of the Gentlemen of his Hon. and Learned Friend's profession; their minds and thoughts were fixed on other things; they considered themselves but half at home within those walls; they were birds of a different class, and only perched on that House in their flight towards another; here they rested

vested their tender pinions, still fluttering to be gone, with Coronets before their eyes; here they took their early exercises to enable themselves to fight against them in another place; for which reason they were never forward to assert and maintain the Privileges of the Commons: they had their best bower anchor cast in the House of Lords, and therefore were perpetually urging the Commons to go there in search of their Privileges. They looked on that House as a mere ship of conveyance, and like the Irishman, who thought, being a passenger that he had no concern in the safety of the vessel, they cared little what rocks and shoals the run on; considering themselves as mere voyagers there, they looked up their abilities, and kept every information to make a more brilliant display in the haven to which they were sailing, leaving the struggle there to poor, uninformed Laymen. The Hon. and Learned Gentleman, Mr. Burke said, had exhibited much eloquence, but *ad constandum benevolentiam auditorum* was the Learned and Hon. Gentleman's maxim, for he trusted to his eloquence only—he had not illuminated the House, he had not even dazzled it. The Hon. and Learned Gentleman had told them, that he had little attended to the subject, that he came with Pamphlets in hand, and then produced a precedent—so opportune! “A friend in need is a friend indeed.” Since he came down to the House, a friend had told him of a Knight armed cap-a-pie as a champion for the Lords, and ready to break a lance against the privileges of the Commons. At the first mention of this Knight, Mr. Burke said, he felt some alarm, and went on to see how he was armed, and whether he had any enchantments about him, to render this Knight invulnerable, and if so, perhaps he should have enforced the Statute of Henry the Fourth against him; but he found that unnecessarily, and had shook off much of his dread, when he discovered this renowned and chivalrous Knight to be no other than Sir Adam Blair, who, he believed, would turn out a Knight Errant, and break his lance against the party that brought him forward to attack the Commons. Mr. Burke, after this tally, entered seriously into the precedent so much depended upon by Mr. Burke, of Sir Adam Blair, who had been discharged in 1690 by the Lords. Sir Adam, he said, was impeached in the close of the year 1689 by the Commons, and was committed to Newgate; before the Impeachment was proceeded in to trial, a dissolution took place; and in March 1690, Sir Adam petitioned the Lords to be brought to trial, or enlarged; so far, however, from the Lords conceiving they had a

right to dismiss him in consequence of the dissolution, he was twice sent back to Newgate, where he was confined eight months before he was again brought up, when no notice having been taken by the Commons in the whole of that time, the Lords discharged him on that very ground: this precedent therefore made against those who contended that a dissolution abated an Impeachment; for had that been the case, the Lords would unquestionably have discharged him on his petition; instead of which, however, they continued him a prisoner for a sufficient time to learn whether the Commons would proceed; they not proceeding, he was at length with propriety discharged. He said, he was charmed with and admired ready wit and extemporaneous eloquence also, flowing with noble matter and pointed diction, and no man enjoyed them in a higher degree than the Hon. and Learned Gentleman; but he was no admirer of extemporaneous judgement. The reason of the House having received nothing from his Hon. Friend but such judgement, he attributed entirely to his not being at home; for had he considered himself at home, however homely home might be, he would have shown more affection to that House, than in the introducing a Knight to attack their Privileges. It was remarked, he said, of Louis the Fourteenth, that he had fine, stout, robust children by his Mistress, but that his children by his Queen were sickly, weak, and puny. The King asking Fabonar, his Physician, the cause of this difference, was answered, that the reason was, the Queen had only the rinsings of the bottles. The House of Commons he considered to be in a similar state with the Queen of Louis the Fourteenth; she was the legitimate wife to the Lawyers of that House, but, unfortunately for her, they had a mistress in another place; if they were at home in that House, they would give the virtues as well as the faults of domesticity. We (said Mr. Burke) “have their bodies, they their souls; which has the better bargain?” He ridiculed the idea of going into a Committee to search for precedents to ascertain their Rights; and said, no man, except those who were not at home, if he had been in the uninterrupted possession of an estate for 200 years, would employ all the lawyers, all the attorneys, all the hunters of records, all the old scrappers of parchment, all the resuscitators of dead ink, to discover a flaw in the title of their own possession. According to the Learned Gentleman, from the earliest origin of things, they must seek diligently to find a rule against themselves. A Right Hon. and Learned Gentleman (the Master of the Rolls) had objected to the length of the Impeachment,

and suggested the propriety of bringing in a Bill to limit the time, and prevent their running in future to such length; he was glad, he said, for the first time, to hear from a great Chancery Judge objections to delay; he had never expected to have been taught expedition from a Chancery Court: it was, however, to him a circumstance of greater astonishment, that the Right Hon. Gentleman should have objected to the proceeding on written evidence, when that was the only evidence taken in Chancery causes. Mr. Burke said, the Hon. Gentleman who had contended for the King's power to put an end to Impeachments by a dissolution, had not attempted to prove in which way such a prerogative could tend to the furtherance of justice, to the conviction of guilt, to clear innocence, and to make virtue apparent. No such attempt had been made; the assertors of an Impeachment abating with a dissolution, knowing well, that its only tendency was to make a way for the guilty to escape: it would be long, however, before he should be convinced that such was the law of the land, or consistent with the principles of the constitution. He would not take defence for a commodity, nor would he more readily admit a defect to be a part of the constitution of the country, than he would allow the leprosy, the stone, the gout, pleurisy or consumption, to be parts of the constitution of the body, on account of those diseases attaching to man. He contended, that the law of Parliament was superior to all defect, and was the paramount law of the land. Mr. Burke said, the right of the Commons to continue an Impeachment from one Parliament to another had been admitted by each branch of the Legislature, Charles the Second and his Chancellor, the Earl of Nottingham, admitted it in 1678; it had been recognized by the Lords, as an adjudged case, on the trial of Lord Stafford, whose counsel were not even permitted to dispute it; a solemn judgment was the consequence, and a Peer lost his life, his honours, and estates. In the first year of the reign of James the Second, 1685, an attempt, Mr. Burke said, had been made to rescind the Precedent of 1678, by entering on the Lords' Journals a resolution that Impeachments did abate by dissolution; but such an arbitrary order of the Lords could not rescind an Act of the whole Legislature and a solemn judgment. Mr. Burke justified the heat of the Commons against Lord Danby, who had sold the dignity and honour of the Crown to France; such crimes he hoped ever would occasion great heat: he said, he never knew a more fair or a more constitutional trial than Lord Danby's. He declared he had enquired much into the subject before

the Committee, and defied any Gentleman to shew him, from the first volume of their Journals to the last, a single declaration against the Right now claimed. He was equally clear that the Law Courts and the greatest Law Authorities were with him, and there was a regular chain of Precedents decidedly conclusive that Impeachments did not abate with dissolution. He asked if all the Precedents that had been stated, and especially the latter ones, did not bear marks of the spur of occasion; the whole series of them was, to his sight, obviously *spur galled* from flank to shoulders.

Colonel Simcoe rose to explain. The Colonel said, he should have disregarded the ban or anathema of the Right Hon. Gentleman, how he conceived otherwise than he did of the Impeachment; but had he been a new Member, he should have been intimidated from giving his opinion, in consequence of the Right Hon. Gentleman's menace on a former night, of considering every man an enemy to his country who voted against the motion. The Right Hon. Gentleman, the Colonel observed, had, when the subject came under consideration last week, stated that there were four Grand Committees, the Grand Committee of Trade, the Grand Committee of Religion, the Grand Committee of Justice, and the Grand Committee of Privileges; and that they were then sitting in the Grand Committee of Privileges and the Grand Committee of Justice. Upon reflection, the Colonel said, he had recollected that the Committee of Privileges was a subordinate Committee; there was another Grand Committee indeed, and that was the Committee of Grievances, and when that Committee sat, he would state a grievance to it.

Mr. Paulet (a new Member) said, the question was divisible into two parts, that relating to the Constitution, and that relating to the Law; the former, he said, seemed to balance. Mr. Paulet thought those who had sat in the last Parliament should have passed an Act of Parliament to have saved the present House from the trouble and difficulty the House found itself involved in. Mr. Paulet took notice of an expression used by Mr. Burke last Friday, relative to the old and new Members adhering to the Mace, and supporting the dignity and privileges of the House. He declared, he had no doubt but the new Members would stick as firmly by it, as the old ones ever had done.

Mr. Grant (Son of Sir J. Grant) expressed a wish that all such questions were cut into one or two points, as they would then be more easy to be argued. He said, the House seemed to him to be going out of their way, and, under pretence of finding Precedents, indulging

deluging themselves in reasoning upon them, and making a selection at their own option. He said, he suspected that the phrases Parliamentary Law and Constitutional Law were adopted the better to conceal a design to act agreeable to arbitrary will and resistless power. If they were to go by Precedent, they were bound to follow the last, without reasoning upon it; if they took another line and acted discretionally, meaning to make a Precedent for themselves, that was another matter, and in that case the existing Precedents will be out of the question; but *latet anguis in herba* seemed to be a true motto of the use made of the terms Parliamentary Law and Constitutional Law. When they talked of the Law of the Land they talked intelligibly, and every body knew where to look for it. Mr. Grant said, he was himself an Advocate at the Bar of the Court of Session, where the Civil Law was practised, whence he stated a principle, and read an extract or two from Justinian to prove that the principle was founded. After much legal reasoning, Mr. Grant stated why he thought the Precedent of 1701 was sufficient to overthrow the Precedent of 1685, and therefore the former ought to be deemed the last Precedent, upon which ground, he declared, he should vote for the Right Hon. Gentleman's Resolution.

Sir Charles Gould said, he should not detain the House but a very few minutes, and would promise to speak closely to the question. Sir Charles then produced a paper, on which he had copied several Extracts of Resolutions, &c. from the Journals of the House of Lords, which he stated to the Committee, and gave his reasons why he thought some of them were in point to the present question. Sir Charles spoke so low that we could not hear enough of what he said to follow him with any degree of certainty.

Mr. Mitford, in a very clear and able speech, stated that the honest prejudices of Lawyers had often proved most salutary in their consequences to the preservation of the constitution. Mr. Mitford said, he took it to be a principle inherent in the constitution, that all power takes its origin from the Crown. The Crown, it was universally agreed, called power into action in a variety of different ways. To illustrate this, he stated that the four Courts of Westminster Hall could not open for the administration of justice unless the Crown first gave the proper authority, nor could the various Commissions of Oyer and Terminer, and all the other Commissions that were necessary for so many different occasions, issue but at the direction of the Crown. Having thus described the first originating principle of action in the administration of justice, Mr. Mitford stated the nature of the first pro-

cess of suits, from the issuing of the Writ till the appearing to it, and the various forms; which, being wisely provided for by the equal distribution of justice between party and party, were necessary to be complied with strictly, because, in case of a failure of compliance with any one stage of the process, the whole would cease, and must be commenced *de novo*. In tracing this, Mr. Mitford made himself perfectly intelligible to every man in the House, professional or not. By the statement clearly appeared, that there was a direct and palpable analogy between a process of the kind described in the Courts below, and the process of an Impeachment in the House of Commons. The latter, though the single judicial process that did not *per se* originate from the Crown, but was completely popular, Mr. Mitford proved to abate whenever a dissolution of Parliament took place. He defined the distinction between a prorogation and a dissolution; the latter implying that after a given time Parliament would re assemble, and consequently that its functions, though put into a state of dormancy for a time, would be called again into action; dissolution, on the contrary, putting an actual and immediate period to the existence of a Parliament. Mr. Mitford said, he was ready to admit, that during the Impeachment, the Commons had complete controul over it, and that the Lords could not give judgment, unless the Commons prayed it. According, however, to the principles of the constitution, the House of Commons had an end, and there was nothing in the Constitution that could be construed to give the House a power of revising in a new Parliament the proceedings of the old one. With regard to the implied question, Whether the Impeachment was depending *in statu quo?* to enable him to give an answer to that, Mr. Mitford said, he needed no examination of principle, no application of precedent; the matter required no other guide but his conscience and his feeling; it was impossible, however the Impeachment might, under some sort of a construction or other, be said to exist at all, that it could exist *in statu quo*. Mr. Mitford added some further reasons in proof of this latter part of his argument.

Mr. Dundas rose next, and very ably supported the original question. Mr. Dundas said, he had formed his opinion from what he had heard in the House, and that he should that day stand in the singular situation of concurring with the several Gentlemen with whom he was seldom in the habit of agreeing on Political Questions, and differing from others for whom he professed a very sincere respect, and had long been accustomed to

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consult on the most advisable means of bringing forward the public business in that House. With regard to the question itself, Mr. Dundas hesitated not to declare, that it was a question of the greatest magnitude and importance of any he had ever risen to speak of since he had enjoyed the honour of a seat in that House, as it immediately concerned the existence of that great constitutional instrument of public safety, the Right of the House of Commons, in their own name and that of all the Commons of England, to vote an Impeachment against any public delinquent, and carry it up to the Bar of the House of Lords for trial; a matter so important in every point of view as to supersede all other considerations. The Court of Judicature before whom Impeachments were to be tried, was the High Court of Parliament, depending not upon the casual termination of a Parliament either by prorogation or dissolution, but possessing an inherent right; a right not revived by the King's Writ, but by their own Power, being assembled in Parliament. The right possessed by the Commons was to impeach, and that right was equally inherent in them, as the representatives of the Commons of England, to whom the right had ever belonged, as in the Lords to try and decide upon such Impeachments: to these two bodies, therefore, holding each separately inherent rights and functions, belonged the important constitutional power of Impeachment. The conclusion to be drawn from such premises he was warranted in declaring to be, that no law or power existed to impede an Impeachment, and that it was reasonable to suppose the Law of the Land and the principles of the constitution authorized every measure necessary to carry an Impeachment, once commenced, to a judicial conclusion. The monarchy of this country was universally and justly admired; for it was a Monarchy, though great, not dangerous, as it formed but a part of a constitution well balanced with distinct rights in each separate branch. The King had a right to dissolve his Parliament, but that right could not affect the inherent rights of the other branches of the Government; the dissolution, therefore, not abating an Impeachment, gave to each the full, free, and effective exercise of their privileges. The contrary doctrine would admit the power of the Crown to destroy the privileges of the Lords and the Commons. In 1678, he argued, the right of continuing from Parliament to Parliament an Impeachment had been recognized, acted up to, and sealed with the blood of one of the first families in the kingdom. Our ancestors had nobly maintained that right, and had ever been alive to the

PART IV.

least infringement of it. In the case of Lord Danby, it had been proposed by the Lords to have a Lord High Steward appointed; but the Commons, jealous of their rights, interposed, demanded a conference, and successfully resisted the appointment. The attempt on the part of the Lords to have a High Steward appointed to preside at Impeachments, might at first view appear to be a matter of little consequence; but the way in which it had been resisted by the House of Commons had shewn it to be a matter of no small import, and had, at the same time, marked decidedly their opinion of the right to carry every Impeachment to a conclusion, in which they might have been interrupted had they acquiesced in the appointment, as the King might, by refusing to appoint a High Steward, have prevented the prosecution of every Impeachment. Alluding to the attempt of the Crown, in the case of Lord Danby, to destroy the effect of an Impeachment by a pardon, he quoted the Resolution of the Commons, in consequence of such attempt, in which they had well asserted, "That no right existed either in the Crown or the Lords incompatible with the acknowledged privileges of the House in regard to Impeachments." He said, it had been the practice with many to reprobate the Long Parliament, for the purpose of adding force to their arguments against the right now contended for. He would not, however, make one to reprobate that Parliament; for, whatever were their faults, Englishmen ought to revere their manes, for in that Parliament the seeds had been scattered for the privileges which the House then enjoyed; and to them we owe the Habeas Corpus Act, which Englishmen justly admired as the monument of their dearest rights. Our ancestors, Mr. Dundas said, had nobly maintained their rights; he doubted not but their successors would contend equally, and hand them down to their posterity as they had received them. If in the present instance the right was not asserted and maintained, there would be an end for ever to Impeachments. From the earliest page of the Journals to the last, not a single insinuation would be found of a doubt of the right to proceed. He had, he said, many precedents to shew undeniably the right; but that having been, in his opinion, already fully and ably proved by other Gentlemen, he would not enter upon them. As, therefore, the right was undisputed on their own Journals, as it had been recognized by the Lords on a solemn occasion, and as a single contradictory *dictum* could not be produced against it, where could be the necessity to go into a further enquiry, and particularly to the

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Lords' Journals? He had no objection to look for formalities, but would never submit to search in any other place than in that House for the rights of the Commons of England, enjoyed through their representatives.

The Solicitor General (Sir John Scott) having been called upon by Mr. Dundas in the course of his speech to answer a question or two, rose to give that Gentleman a reply, and began a most elaborate, learned and able professional argument, with stating directly and explicitly, that a Dissolution of Parliament did abate an Impeachment, and that no more of it remained in existence but the mere record, which was in the possession of the House of Lords. Sir John proceeded to argue the Precedents one after another, which he did very clearly; and in order to illustrate them more forcibly, Sir John produced the application of Lord Danby to the House of Lords, and likewise the language held on Lord Stafford's Trial. Sir John declared, that to say that the King could not pardon a person impeached, in law it was not strictly true, notwithstanding the Act of 12 and 13 William and Mary; the King could not certainly pardon formally and directly; in other words, a pardon was not pleadable to an Impeachment; but the King might attempt to pardon with effect, and it was *muzzing the Lion of Prerogative with a Cobweb* to endeavour against it. Sir John argued most closely through the whole of the subject, and, after stating many new cases, declared, that the Impeachment could not depend *in statu quo*.

Before he sat down, Sir John appealed to Mr. Burke, whether he had not always treated him with respect; and whether, in return, he had not a right to expect that the Right Hon. Gentleman should at least keep terms of common civility with him, instead of letting it go forth into the world, that a person of the Hon. Gentleman's high character treated any argument of his in a manner that was scarcely tolerable from one Gentleman to another.

Mr. Burke said, he never meant to treat the Hon. Gentleman otherwise than with the utmost personal respect.

Mr. Fox rose about twelve at night, and began a very brilliant and able speech with observing, that it was awkward to have to trouble the House at so late an hour, after three days debate, and particularly to have to repeat what had been said so well already, on a question that had been discussed with so much deliberation and ability. His Hon. and Learned Friend had taken pains to support

Precedents directly in the teeth of the privileges of the House of Commons, and immediately inimical to the power of Impeachment, on which depended not only the existence of that House, but of the Constitution itself, and of all that was thought dear to Englishmen, and to every man who wished to continue to live under a free government. How great had been his surprize then to find, after his Hon. and Learned Friend's speech had been so well answered in that extraordinary argument that they had all intended to with so much admiration the day before, to see another Learned Gentleman rise immediately afterwards, and, instead of taking new ground, go over the same list of Precedents, and endeavour to support them with the same sort of argument as they had also heard before, and had that day heard completely confuted and overthrown! The Learned Gentleman had been followed by other Gentlemen of the same profession, who had likewise contented themselves with again and again holding up the same Precedents. Mr. Fox stated some of the features of the speeches of the Master of the Rolls and the Attorney General, and animadverted with severity on each. That day a Gentleman of the Long Robe possessing sufficient ability to qualify him to treat any subject with perspicuity and plainness, had led them down to the Courts below, to trace there the Privileges of the House of Commons; and had declared, he could not conscientiously vote for the question, if it were understood that the Impeachment existed *in statu quo*. After arraigning this latter declaration, Mr. Fox said, he could no otherwise account for the Gentlemen of the Law all taking up the same exploded Precedents, and endeavouring to make a stand with them, but by supposing that each of them hoped, although his Hon. Friend's Speech had been so well answered, they might stand a chance of receiving an answer less able, and thence they might have the good fortune to gain ground. The Right Hon. Gentleman who had spoken that day had convinced them of their error, and in an argument in which the subject had been exhibited in as new a point of view, and yet as forcible as one, as it was capable of being placed in, had again put the rallied forces of the Learned Gentlemen to the rout. After thus noticing the course that the debate had taken, and promising to touch upon what had fallen from the Learned Gentleman who had just sat down, Mr. Fox said, it was not his intention to dwell on the Precedents about which they had heard so much, but to rest his argument on the general ground;

ground; before, however, he proceeded to discuss the main point, he would just say a few words on one or two of the Precedents: and, first, of that Resolution of the year 1678, under which Lord Stafford was tried, convicted and executed. If he were asked, he should certainly say that Lord Stafford's verdict was a just one according to the evidence; at the same time he should have no scruple to own, if the question were put to him, Whether he doubted the evidence of Oates and Bedloe? that he certainly did, on account of their notoriously bad character. He declared, that he blamed not the Peers who tried Lord Stafford, because, considering that the evidence impressed itself on their minds as matter of fact, who could say that their verdict was not a just one, and their conduct perfectly consistent and perfectly warrantable? Mr. Fox took notice of the conduct of Charles the Second (respecting Lord Danby), whose obvious wish it had been to screen his favourite; and it was no wonder, for Lord Danby's guilt was generally imagined to be no other guilt than the guilt of the King himself, who had commissioned his favourite to sell the British Interests to the King of France, and to barter away the honour and dignity of the British Crown for Foreign Pensions. It was therefore the interest of Charles to save Lord Danby; and in order to check a purpose so necessary to himself, they saw him make use of every shift, and resort to every exercise of his prerogative that the advice of his Minister or his own ingenuity could suggest. Fortunate was it for them that it had so happened, because the consequence had been, that they had a direct Parliamentary condemnation of the illegality of every one of his measures on this memorable occasion. When the King endeavoured to foil their Impeachment of Lord Danby, by creating a difficulty relative to the appointment of a Lord High Steward, they had voted a Lord High Steward unnecessary; and when he had proceeded to stop the Impeachment by a Dissolution, they had voted that a Dissolution did not abate an Impeachment. Mr. Fox descended on the Resolution of 1678, declaring that it did not make Law, what was not Law before. He animadverted on what had fallen from the Solicitor General; and said, he was astonished that the Learned Gentleman should have seized on the Precedent of 1690, after it had been so completely demolished in that day's debate. If it had been the Law of Parliament that Impeachments did not abate, the solitary Precedent of the Duke of Leeds did not alter it. He spoke of the year 1679 as a year admitted on all hands to be most favourable to

our Liberties. In that year, not only the *Habeas Corpus Act* was made, but restrictions on the Press expired, and were never more renewed. In that year also was passed the famous Declaratory Act, recognizing our freedom and franchises. That therefore was not only an unexceptionable, but a glorious æra; and Judge Blackstone, who was as distinguished for his party prejudices as he was for his legal knowledge, had declared, that if he were asked when the Liberties of Englishmen began, he should say in the year 1679. Mr. Fox said, his Hon. and Learned Friend's amendment had been supported by most of the great Lawyers in that House, but luckily the support they had been able to give, had proved but little, and he trusted that the effect would be proportionate. If the lawyers to their knowledge of the law were to add some regard to the constitution, he thought it would be no great harm. Mr. Fox said, he saw the high necessity of Impeachments, but not so much as a check against Ministers as with regard to the Courts of Justice themselves. Suppose our Judges were as corrupt and as bad as many of these in the reign of Charles the Second, where was our remedy but by Impeachment? If, therefore, that great instrument of safety was abolished, we should have no Law, no Justice, not even a *scintilla* of liberty. Mr. Fox reprobated the Gentlemen of the Long Robe for having, as it were, united to oppose the Motion. He said, when he saw a corps of professional people, a knot of Lawyers, and a band of men all animated with the *l'esprit du corps*, setting themselves against the liberty of the subject, and the best means of supporting the constitution, he should say it was worse than the Popish Plot in Charles the Second's time, if any Popish Plot there had existed. One of these Gentlemen, he observed, had said, there were cases in which Impeachments were not applicable, and then they might have recourse to Bills of Pains and Penalties. This was insidious advice, Mr. Fox said, because they all knew the King could by a dissolution of the House put an end to such Bills whenever he thought proper. Another of these Gentlemen had gone so far as to declare, that the King might still *attempt* to pardon the object impeached. By *attempt* to pardon, he supposed the Learned Gentleman meant that the King might produce the effect of a pardon by a Dissolution; and in that case the Learned Gentleman had added, that the House had a remedy, for they might impeach the Minister for having advised a Dissolution. But in seriousness Mr. Fox asked, What sort of security was this? Suppose the House did impeach, the King might dissolve the Parliament again, and thus again render their

constitutional weapon useless, and so on they might proceed, and the last effort to impeach prove as ineffectual as the first. An Hon. and Learned Gentleman, Mr. Fox said, had stated in his speech that he had heard him insist at the Bar of the House of Lords on his right, as a Manager, to introduce new Articles of Charge in any stage of the Trial. He certainly had insisted on it, because it was a Constitutional Right belonging to that House; but it was that sort of Right that never should be used but on very extraordinary occasions; nor had he any expectations that it would be necessary for him to exercise it on the present occasion. With regard to the objection made by the Learned Gentleman against written evidence, that it was not fit for any person to adjudge upon, Mr. Fox said, it was a little extraordinary that he, who was neither a learned nor a professional man, should have to instruct the Learned Gentleman, that if he should become a Judge, or Chief Justice of the King's Bench for instance, and the King's Attorney should pray a judgment on any man against whom he had obtained a verdict, the Learned Gentleman must himself pass the judgment on written evidence and no other: nay, he would not even have any recollection of the evidence, which he had contended it was so necessary for him to charge his memory with; because in the King's Bench the custom was, a Justice Judge tried a cause often out of Term, and when the chief or the senior Justice came to pronounce judgment in Term time, he had no other proof of the evidence than what might be deemed an old-fashioned species of evidence—the Judge's Notes who had tried the cause. Nor was that all the written evidence that would be laid before him—affidavits both of aggravation and of extenuation might and were frequently produced and read in Court. Upon this species of written evidence might depend a fine from one shilling up to ten thousand pounds; and yet his Hon. and Learned Friend near him had said, he would not see a sparrow fall on written evidence, nay more, not even a feather of its wings hurt! The Hon. and Learned Gentleman, Mr. Fox said, who had spoken last, had asked, if on a Dissolution all their proceedings did not cease? He would answer, a Dissolution had precisely the same effect as a Prerogative; during the interval occasioned by either, their proceedings certainly ceased. The High Court of Parliament could not then sit, any more than one of their Committees. Mr. Fox said, if he was to understand that the late Parliament had been dissolved under the idea that the Impeachment abated, he must say, the Dissolution was a criminal

one, and ought to be condemned as such. But had the Right Hon. Gentleman dissolved the late Parliament with any such view? He believed most sincerely that he had not. There might be others, however, who might have advised his Majesty to such a measure. If the act were so, those others of the King's servants deserved to be impeached. Mr. Fox mentioned the End of the year 1773, in which several of the Rights of the Commons were declared. At that time there had prevailed an idea of inserting the Right of Impeachment; but a Gentleman whom he highly esteemed, though he did not always agree with him in his political principles, he meant Mr. Dyson, had in his mind very properly objected, observing that it would enfeeble that great Right, as it would imply some doubt of its being an inherent independent privilege of the House of Commons on the behalf of all the Commons of England, and therefore he was happy it had been kept out of it. He observed, that when the Impeachment had been originally resolved on, a motion had been made, that it should be prosecuted with vigour. This had been agreed to by the Learned Gentlemen; and if their doctrine that day should prevail, it would be obvious, that at that time a secret poison lay lurking in their breasts, since they knew that it would be but for a short period, as the Impeachment would abate as soon as a Dissolution should take place. With regard to the advice that had been given them to look into the Journals of the other House, that was, he believed, the first time that a Member of the British House of Commons had recommended them to search into the Journals of the House of Lords to find the privileges of the House of Commons. He reprobated this idea, and condemned it as likely to avert and turn aside that stream of Law and the Constitution, on the uniform currency and clearness of which so much depended. With all his respect for the reigning Family on the Throne, Mr. Fox observed he would say, the discussion of that day, should tend in the loss of his Right Hon. Friend's original Question, was as great a violation of the Constitution as could be attempted; and he had not, he declared, been less astonished at the sort of doctrines broached that day, than he should be, if any Hon. Gentleman was to rise in that House and pronounce the Act of Queen Anne settling the succession in the Hanoverian Line a breach of the Constitution, and that the descendants of James the Second were the lawful Heirs to the Throne. Such a declaration, extraordinary as it would sound at that time, would certainly excite great indignation; but, natural as that feeling would be, Mr. Fox said, he should endeavour to repress

reprefs his fenfations, and to procure what the important Queftion before them had undoubtedly received, a temperate deliberation of the Houfe, and a difcuffion of the fubject in fuch a manner as was moft likely to produce a firm and effectual repulfe and condemnation of a doctrine fo abfurd and extravagant. The Learned Gentleman who had lately fpoken, Mr. Fox obferved, had faid, that by coming to the queftion propofed by his Right Hon. Friend, "they would only muzzle the Lion with a cobweb; he might fill do them more mischief." Yes, Parliament might be diffolved; but he would fay, they might vote the Impeachment without previous enquiry of any kind. There were many Precedents for it. But then it would be faid, the King my make forty or fifty Peers, for the purpofe of refcuing a criminal from juftice. That indeed might be done, and whenever it was, he fhould lament it; at the fame time he was ready to confefs, that whenever the King's Power of making Peers fhould drop, it would be dangerous to the State. Should, however, fuch a bad and pernicious fyftem be begun, there fhall would refide a power in the body of the people at large to reform abufes of fo enormous a fize. Such an event, however, was what every good man muft deprecate, as too dreadful in its probable confequences; and whenever fad neceffity fhould urge it on, every individual who had a heart to feel for the calamities of his country muft deplore the exigency of the times. Nevertheless, they were to watch poffibilities in that Houfe with an eye of caution and jealoufy; and fhould tyranny ever be enforced, he had no doubt but the Gentlemen of the Long Robe, whole opinions of that day he had felt himfelf obliged to reprobate, would contradict the fentiments they had chofen to deliver, by their actions, and prove by their zeal and activity, that they were as ready to lay down their lives in defence of their freedom, as any defcription of men whatever. He affured his Hon. and Learned Friend, that he had not forfeited any part of his regard and efteem by having held an opinion different from his own on the fubject of the three days debate; and for the reft of the Learned Gentlemen individually, he entertained a fincere refpect. Mr. Fox declared, that when he confidered the conftruction of any particular Act of Parliament, he then looked for Precedent and Principle; but when he examined any thing touching the Conftitution itfelf, he reforted to reafon and argument rather than to Precedent or Principle. With that view he had confidered the power of voting Impeachments, and he begged to be underftood as ftanding upon the general ground refpecting them; he thought them the firft, moft effential and

paramount excellence of our Conftitution, and trufted they would be able to preferve that valuable and inherent right unimpaired, and hand it down from Houfe of Commons to Houfe of Commons, Parliament after Parliament.

[Mr. Fox, when difcuffing the Precedents and the eftablifhed right of the continuance of Impeachments notwithstanding a Diffolution, quoted the authorities of Chief Juftice Holt, Mr. Juftice Fofter, and other Law Writers of acknowledged fame, impartiality, and wifdom.]

Mr. Yorke rofe, and complained, in terms of fome warmth, of the attack that had been made on the Gentlemen of the profefion to which he had the honour to belong. Mr. Yorke faid, in all the critical events of our hiftory, the Lawyers had diftinguifhed themfelves as the friends of freedom; and that at the Revolution, it was matter of notoriety, that the glorious event had been chiefly produced, and the Conftitution fettled, through the patriotic efforts and great abilities of the firft gentlemen of the learned profefion who at that time had feats in the Houfe of Commons.

Mr. Fox faid, he had intended no reflection on the Profefion, but had felt himfelf bound to combat opinions which he could not but confider as of the moft mifchievous and moft unconstitutional tendency. The manner in which he had fpoken of Lord Chief Juftice Holt, Lord Somers, Mr. Juftice Fofter, and Serjeant Maynard, was a fufficient proof, that he had intended nothing like a general and illiberal reflection upon the Gentlemen of the Long Robe.

Mr. Erskine faid, among all that he might have loft by the conduct he had held that day and the three preceding, it was fome comfort to him to think that he had not forfeited the efteem of his Right Hon. Friend [Mr. Fox]. He was not a little flattered, Mr. Erskine faid, to find himfelf fupported by a Gentleman defcended from a Lawyer of fo refpectable a name and character as the great Lord Hardwicke. He muft fay, that he thought the profefion had been infulted in the courfe of the debate; not by the Right Hon. Gentleman who had juft fat down, but by another Hon. Gentleman, who had fpoken more early that day; and he could not help thinking that that Right Hon. Gentleman had dealt a little more hardly with him, than from their mutual friendfhip, and the kindnefs he had ever experienced at the Right Hon. Gentleman's hand, he had laid his account with expecting to receive. He had opened the debate, and propofed the Motion for the Chairman to leave the Chair, from a fenfe of duty, and no other impulfive whatever. In fpeaking to the queftion,

he had endeavoured to do so to the best of his ability ; and if he had failed, the triumph would be greater to those who should prove to be most successful in the division. He was not, he declared, convinced by any thing that he had heard, and therefore he would not give up his motion. That he had been *out-debated*, he admitted ; but he would not admit, that the Gentlemen who had maintained arguments opposite to those which he had humbly offered to the consideration of the House, had proved that they were entitled to carry the majority. With regard to his being one of that order of birds who had been ludicrously said to be birds of passage, who perched there in their flight to the House of Lords, and who did not consider themselves at home in the House of Commons, he assured the Right Hon. Gentleman he was no such bird ; if he had been one, he would not have perched there, but would have chosen a bough where the leaves were thick, and a snug nest might have been made. And as to his giving that House the mere rindings of his bottle, he had set such wine as he had before them, and they should have been welcome to the best wine in his cellar ; indeed the best of his abilities should be ever at the command of the House. Mr. Erskine added some farther arguments to prove that the Lawyers had voted disinterestedly, and then concluded with repeating his motion.

Mr. Burke rose, thinking himself called upon to say a few words in consequence of what had been said by the Hon. Gentleman who had just sat down. Mr. Burke said, he believed he had spoken in perfect good humour, and he thought he had observed the House partake of it. He wished to hurt the feelings of no man ; he esteemed the law highly, and approved of the country being governed by law, but not by Lawyers. He had a high respect for the Hon. and Learned Gentleman's talents, for his great eloquence, and his uncommon aptitude at argument ; he could not therefore but lament the loss of those talents, that eloquence, and that argument, in support of the great constitutional cause, the Impeachment of Mr. Hastings. The question that had been moved by him was a question that involved in it their Constitutional Privileges, and therefore when he understood that the Hon. and Learned Gentleman had come determined to overwhelm his efforts in the greatest and most important cause in which a House of Commons could be engaged, and found he brought such slight materials with him, he could not but think that a fine natural flow of words without argument and prompt deliberation, rather than a studied and a laborious endeavour to make himself equal to the great work he had to

rashly undertaken, merited the sort of animadversion that he had thrown out on the Hon. and Learned Gentleman in common with all others who had fought on the same side of the question. With regard to friendship, it was, Mr. Burke said, if any thing, superior even to a love of one's country, as it was the source and spring, the animating soul whence originated every other virtue ; but what right the Hon. Gentleman had to expect any particular friendship from him, that Hon. and Learned Gentleman he felt knew. As to the subject of debate, he thought those who had chosen to defend the Privileges of the House of Commons had defended them so well, that they did not want the help of the Hon. and Learned Gentleman, who had taken the field like David against Goliath, lightly armed with a stone and a sling, that could do no execution. Mr. Burke mentioned the Pamphlet that Mr. Erskine had reasoned from, and paid a compliment to Mr. Adam and Mr. Anstruther.

This called up Mr. Erskine, who explained, that the Pamphlet was nothing more than a collection of Precedents copied by an humble friend of his for his greater convenience in referring to them.

Mr. Ord (Secretary in Ireland under the Duke of Rutland) said, an Hon. and Learned Friend near him had made such an impression on his mind, that he would not, till he heard more, vote that the Impeachment existed *in statu quo* ; but as to the first and main question, his mind was perfectly made up ; on that, therefore, he could vote with the Right Hon. Gentleman.

Strangers having withdrawn, the Committee divided,

Ayes (for the Speaker's leaving the Chair)	-	-	-	-	-	30
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Noes	-	-	-	-	-	143
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The original Motion was then put, and carried without a division.

The House adjourned at a quarter before THREE o'clock.

MONDAY, February 14.

Mr. Burke began a speech of three hours continuance with declaring, that he rose to follow up the Resolution of the House on a former day, "That the trial of Mr. Hastings was pending," with a motion for proceeding therein. But before he did so, he said he must congratulate the House, that by the Resolution they had come to, they had maintained their invaluable right, and decided that neither the Crown nor any other power could stop an Impeachment commenced by them : like the Sun, they had shewn, that though they might set one day, they could rise the next with greater glory. He congratulated the

the House, that in the Resolution they had adopted, they had proved themselves the champions of law, of justice, of liberty, and of humanity; he congratulated them on what they had done, and looked forward to the future with a full confidence that they had not declared this sacred Right of Impeachment for the purpose of abandoning it. He said, he was confident the virtue of the House would not rest on professions; but he shewn in its actions. He understood from report, that the propriety of proceeding was to be contested; he considered that such resistance could only depend upon two great objects, first, Whether the charges were true? and, secondly, Whether the person prosecuted was a fit object for the notice of the House? He contended strenuously for the effect of both these points, and, having examined them separately, he observed upon the objections on account of the length to which the Trial had already been carried. If they were convinced that the charges were rash, malicious, inconsiderate, and unfounded, it would become them to repent of their error, and confess it in the fullest manner. Repentance was the most amiable of all virtues, and what no man need be ashamed of. Let them therefore confess their fault, make the injured party atonement, pay him all the charges he had been put to, and move the Crown to bestow honours and rewards on the defendant, who had been rashly, maliciously, and falsely accused. If, on the contrary, they were satisfied that the charges were true; that the conduct of the virtuous majority of the last Parliament had been right, and they nevertheless consented to desert and abandon a just and necessary prosecution, they would fly in the face of all right and all justice, and infamy must necessarily fall somewhere; either on Mr. Hastings if convicted, or on the House if they abandoned the proceeding, or on the Lords if they unjustly acquitted him. If they had neither the candour to confess that the prosecution was improper, nor the vigour to carry it on to its conclusion, if after having made the charge they flew from it, and did not confess it to have been rash, shameful and erroneous, they would disgrace themselves forever, and abandon the exercise of their dearest, most important, and most useful privilege; a conduct of which he could not bring himself to believe that the House could ever be guilty. It had been argued, that the Trial had lasted a long time, and that the length of it was a sufficient reason why it should be persisted in no longer; but if objection was admitted as a substantial reason for putting an end to a trial, he who com-

mitted the greatest crimes would be the surest of an acquittal; and by the House so deciding, mankind would be delivered over to the oppression of their governors, provinces to their plunder, and treasuries to their disposal. On the contrary, if they proceeded in the prosecution, they would hold out to Governors this salutary lesson, they would teach them to be not only above the commission, but above the suspicion of a crime: in one case the people would be saved, in the other they would be ruined: in one, a useful caution would be taught to future Governors, in the other impunity for the commission of any crime. In a former debate, an Hon. and Learned Gentleman had lamented that the Trial had lasted three years; but he would ask that Gentleman, who was an advocate for measuring the length of trials, whether there were hour-glasses in the exchequer for the grievances of mankind, and two-foot rules for oppression? or whether those who confined their ideas to the narrow limit of a *Nisi Prius* cause, were better able to ascertain what ought to be the length of an Impeachment, than a rabbit, which breeds six times in the year, was capable of judging of the time of gestation of an elephant? Lawyers, he said, knew how to turn the telescope as it best answered their purpose, making it diminish or magnify at will, and change great matters to small, and those of trivial import into the most considerable. He instanced the Case of Partridge, as stated in that excellent and entertaining Reporter the author of Tom Jones, who records, that Partridge kept one poor Pig, which got into a Neighbour's Garden, when the Lawyers made so much of the fact, that every body present would have conceived, that instead of keeping one little Pig, Partridge had been the greatest Hog-Merchant in the kingdom. Mr. Burke argued at great length to shew that the perseverance of the Managers in this Impeachment could not have proceeded from malice. He declared he did not like the plea of compassion urged at such a moment of the Trial: false compassion aimed a stroke at every moral virtue, by counteracting justice; and, if suffered, would occasion an irreparable injury to mankind. Mr. Hastings had been long on his trial; but it was also to be remembered, that those who had laboured under his oppression and tyranny had so laboured for fourteen or twenty years. He said, that in this Impeachment, the two most responsible persons in that House for the conduct of affairs in India (Mr. Pitt and Mr. Dundas) had stood among the foremost: it was not, he observed, a common circumstance, that Ministers should stand so forward for the right

right of Impeachment; and when they did, it ought not to be passed by without honourable mention. It was not fair, he said, in those who contended against the length of time consumed in the Impeachment, to urge that it had been continued for three years; for, taking it correctly, it had continued no more than 67 days, at four hours each day. The Managers, he begged to have it remembered, were not answerable for the adjournments, prorogations, or dissolutions of that House; those, therefore, who reckoned time by Almanacks and not days, misled themselves, and, what was worse, endeavoured to mislead others. He wished Gentlemen to recollect, that Election causes in that House had lasted much longer, and that one Committee had continued to sit for ninety days. He said, he considered Mr. Hastings's crimes to form a complete Encyclopædia. The Managers had arranged his crimes in distinct classes, and they had quartered them like the Map of the World; that the Benares charge contained eighteen articles; the charge of the Begums contained nearly as many, and that of the Presents more; and each Charge alleged more crimes than had been gone through by all the Impeachments that ever had been voted by that House. Mr. Burke then entered into a long detail of the difficulties that had been thrown in the way of the Impeachment. He asked, had they forgot that there was such a thing as the Indian interest, which had penetrated into every department of the Constitution, was felt from the Needles at the Isle of Wight to John o'Groat's House in the Island of Cathlamet, and had obtained a considerable footing in that House? Having amplified on the amazing influence of the Indian interest, he said, great difficulties had also arisen from the embarrasments thrown in their way by certain professors of the law, whose confined and narrow mode of thinking, added to their prejudices, made them enemies to all Impeachments, as an encroachment on the regular line of practice in the Courts below. He would prove however, from undoubted authorities, that the House of Commons had a right to profit by their best advantage, viz. their ignorance, and to proceed in their own way to prove the charges made articles of Impeachment. With regard to a limited rule of evidence, he denied that there existed any such thing as a rule of evidence; and contended, that all evidence must vary in its manner and its matter as the nature of each case varied. He said, Lawyers were not a natural part of that House. The House of Commons was descended by ancient writers as consisting of *milites et ciues*, but there was no mention of Lawyers among them, and they were supposed to act wholly as ignorant ordi-

nary-men would, *legendum ut vulgus*. He read a long quotation from Selden to shew that in an Impeachment some centuries back, where their articles were loose and informal, that was held to be no objection, but the Lords amended them. He quoted also Foster's Reports, and a great variety of other authorities, from the time of Richard the Second up to the last reign, to prove that the Law of Parliament was superior to the Civil, the Canon, or the Common Law. After an infinite detail of argument, grounded on the authority of the best writers, he came at last to wind up his speech; and declared, that in compliance with the times and public convenience, rather than his own inclination (for he and the Managers were ready to go through the whole of the charges; but for the reasons he had mentioned), he was willing to go into only one charge more, for the sake of shortening the duration of the Trial, and speedily obtaining substantial justice. That charge was, the one respecting Contracts, Pensions, and Allowances; and he was persuaded, from what he knew of the evidence to be produced, that seven days, perhaps less, but certainly not more, would finish the investigation of that charge, and the establishment of all its great facts by proofs. That charge, he said, would completely destroy the defence set up by Mr. Hastings, viz. State necessity, by shewing that he had squandered more for corrupt purposes, than he had acknowledged to have accepted for the Company's use. The Managers, he contended, had uniformly asserted the right of Parliamentary Law and Parliamentary Usage, and that they had avoided being entangled in technical terms. He said, he should offer two motions to the House; the first, That a speedy issue to the Trial is desirable; and, secondly, That a Committee be appointed to carry on the Impeachment.— Before either, however, he should move,

“That in consideration of the length of time elapsed in the prosecution of Warren Hastings, Esq. it appears to the House to be proper for the obtaining of speedy and substantial justice, that the Managers proceed no further than in the charges on which they have closed their evidence, excepting the charge relating to Contracts, Pensions, and Allowances.” Mr. Fox seconded this motion.

Col. M'Leod asked upon what pretence the present motion was made, when the Right Hon. Gentleman's friend (Mr. Fox) on a former day had stated, that the motion would be to proceed in the Impeachment.

Mr. Fox replied, that the motion of his Right Honourable Friend went to such proceedings, and that the present was but preparatory.

Sir

Sir John Jervis thought, that before the House proceeded in the Impeachment, they ought to have some explanation upon the present state of affairs in India; and particularly so, as he was given to understand that the system laid down by Mr. Hastings had been persevered in by the present Government uniformly.

Mr. Mitford declared that, thinking himself bound by the late Resolution of the House, he should not have objected to the naming of a Committee; but he felt embarrassed by the present Motion, as he considered it highly objectionable to impede the prosecution in any way after such Resolution, and he must therefore oppose the Motion.

The Chancellor of the Exchequer expressed his surprize at the ground of opposition stated by his Hon. and Learned Friend, as the House could not consistently vote for the Managers until they had first voted that there was ground to proceed, which they would do by adopting the Motion submitted to them, and which only reduced the Impeachment to a narrow extent, and rendered it less equivocal.

Mr. Mitford rose to explain. He said, he felt a peculiar degree of embarrassment; for when he was called upon to vote the right of the House to proceed, he was cautioned against giving his vote in opposition to the Resolutions of a former Parliament; and he was now called upon, by the same persons, to vote in opposition to the Resolutions of the former House, by agreeing to a Motion to put an end to the Impeachment by quashing the last seventeen charges.

Mr. Erskine rose to say, that he persisted in the opinion which he had delivered on the subject of the Impeachment in the former debate on that topic; but that in deference to the House he held himself bound not to oppose the proceeding in an Impeachment, which he still thought did not continue, but which they had resolved was in existence, and that a Dissolution differs in nothing from an Adjournment of a single day, and they were exactly in the same situation as if they had come out of the Hall only the preceding day. With regard to the present Motion, the House ought first to have the ground upon which it was urged stated to them, and the *onus* of that matter was thrown on those who had contended that the Impeachment was in existence notwithstanding the Dissolution. They were bound to shew the necessity of an alteration before they stopped the proceeding, and shortened its articles. They must either shew that the charges do not contain criminal matter, or if they do, whether that is capable of proof in the Courts below, or where it is capable

of being brought to trial. Mr. Erskine said, it was understood that there were at this time great men in India, who were acting beyond the rules of law for the benefit of the country, and that they were as liable to be impeached as Mr. Hastings. With regard to the present Motion, he should give no vote at all; because, having contended that the Impeachment was not pending, and having argued that fact in the best manner he was able, in order to satisfy his conscience as a Lawyer, he owed it to his own consistency to give no vote at all that day.

Mr. Baftard said, if the papers he had on a former day moved for, were before the House, he was persuaded the Impeachment would no longer be persevered in: had those papers been upon the table, and a Motion been made to proceed in the Impeachment, he had intended to have moved an adjournment until those papers could have been fully considered; and he pledged himself that upon such consideration it would be proved, if the present House adopted the principles of the last, that the war in India was at an end, for India was lost. He wished not to censure either Lord Cornwallis or General Meadows, nor was it his practice to pledge himself lightly; but this he would again and again pledge himself to, that the conduct of Mr. Hastings and the present government of India were perfectly analogous.

The Chancellor of the Exchequer declared, he could not conceive that the papers alluded to by the Hon. Gentleman contained any thing that ought to have any influence whatever upon the question before the House. —The Hon. Gentleman had stated no inference from those Papers to warrant such delay; when he should, the House would be enabled to decide whether it was, or was not, substantial enough to delay a decision of the question. He considered it necessary, however, for him to say, that from what he understood of the affairs of India at the present time, and at the time alluded to by the Hon. Gentleman, they bore no apology whatever.

Mr. Baftard said, Mr. Hastings had been impeached for a breach of treaty for the purpose of raising money to carry on a war. From the papers he had moved for, he pledged himself to prove that Lord Cornwallis and General Meadows had done the same, and upon that he rested his analogy.

Mr. Fox said, the Hon. Gentleman's reason had not at all convinced him of the impropriety of an immediate proceeding, nor, he hoped, would it convince the House; for if Lord Cornwallis and General Meadows had violated the line laid down for them, it was the strongest possible reason for the

House to proceed in the depending Impeachment with every practicable dispatch, that, if they had so acted, they and every other had servant of the country might either be deterred from the commission of crimes, or be brought to a suitable punishment for them.

Mr. Baftard was not surprized at the wish of the Opposition side of the House to proceed; he was of opinion, however, that it behoved the other side of the House, and some persons who now sat there, to pause.

Mr. Dundas declared, he felt no reason whatever to pause; the pledge of the Hon. Gentleman, so solemnly given, he was positive could never be redeemed. He knew that every step taken by Lord Cornwallis or by General Meadows was warranted by treaties, and he imagined that the Hon. Gentleman, by conceiving otherwise, had gone rather upon the information of others, than upon a knowledge obtained from a perusal of the papers he had alluded to. If Lord Cornwallis and General Meadows were guilty, others were implicated in their guilt. For his own part, in the situation in which he stood, if such a transaction should be proved, and that he had a share in it, he owned in the face of the Public that he should be totally barred from every plea of defence, if while he had heard a charge of Breach of Treaties committed, he were to vote for a continuance of an Impeachment of others upon that particular point. He had no hesitation to say, that if there had been any such proceeding going on in India as intimated by the Hon. Gentleman, it called loudly on the House to press forward, and to be more eager in their present prosecution, in order to put an end to such gross conduct in future.

Mr. Baftard rose once more, and declared his opinion to be, that instead of the Trial lasting only seven days longer, as had been stated, it would last more than three years. In allusion to a former debate, in which Mr. Burke had charged him with having turned his coat, he begged to assure him he had not; that he had voted according to his conscience, in which conduct he gloried: he had voted for the Impeachment, by trusting to the Right Hon. Gentleman's assertion, that Mr. Hastings had made Hindostan a desert; but time had proved, what the Journals of the House would prove, viz. that the contrary was the fact, and that he had been misled. He begged again to assure the Right Hon. Gentleman that he was no turn-coat, but that he should consider himself to be one, if, after having threatened a Minister with an Impeachment, and declared that he had the articles in his pocket, he had taken his hat off

to that Minister, and obsequiously enlisted in his corps for the purpose of becoming Paymaster of the Forces; or if he had maintained a conduct that some called patriotic, but others scrupled not to term rebellious, and had afterwards written a book which gave the lie to all the acts of his life, and all the doctrines he had ever asserted. Mr. Baftard objected to the annihilation of any part of the charges that had been carried up to the Lords, and said, the same stigma would fall upon Mr. Hastings if they dropped the seventeen last charges, as if they were to drop the whole. The present House knew nothing of any of them, and yet they were now called upon by the Managers to drop seventeen, though they knew not whether they were not more important than the three or four preceding. Mr. Baftard contended, that a speedy decision of his trial was the undoubted right of the subject, and that by proceeding in opposition to that grand privilege of an Englishman, the House would be proceeding in oppression. With regard to the papers for which he had moved, Mr. Baftard said, they would prove that Lord Cornwallis and General Meadows had seized the country of the Nabob of Arcot, in violation of the most solemn treaties; and that it was a matter that would be speedily made notorious, by an appeal of the Nabob to the Throne, to the justice of that House, or to the Courts of Law in this Kingdom. He was far, he said, from meaning to condemn or censure the conduct either of Lord Cornwallis or of General Meadows; he only wished to prove, that by the papers he had moved for it would appear that they had been obliged, in a moment of exigency, to adopt a similar conduct with Mr. Hastings in his transactions in Benares with the Begums and with Cheyt Sing. Mr. Baftard read extracts from a letter from Lord Cornwallis, &c. on the subject, urging state necessity as the plea for the measure which, his Lordship said, he conceived would be unpopular in England; and he again repeated, that he meant no reflections on his Lordship or on General Meadows, but to shew that there was an analogy between their present conduct and that of Mr. Hastings; that they had deprived a native Prince of the sovereignty of his country, in violation of the Treaty made by Sir Archibald Campbell in 1787, in which it was provided, in case of failure of the payment of the arrears the Nabob was indebted to us, that we were to send superintendants into his country to receive the money as collected by his Homildars. Mr. Baftard, after some general observations on our not having complied with this condition, said, he did not conceive it proper that parties of different descriptions in that House should

meet for the purpose of oppressing an individual ; and that as Mr. Burke had declared in the beginning of the Trial, that if it should appear that Mr. Hastings, notwithstanding what he had done in India, had left the people happy and the country in a state of cultivation and fertility, he should think that instead of punishment he merited reward ; that fact, Mr. Baftard said, was established by the Resolutions on their Journals ; and therefore, if the Right Hon. Gentleman had acted consistently, he must long since have abandoned the Prosecution of an Impeachment in the progress of which, hitherto, he (Mr. Baftard) could not see that any thing had been made out or proved against the Defendant.

[Mr. Baftard was called to order in the course of his Speech.]

Mr. Wigley, in a speech of considerable length, objected to the Motion, which, he said, struck at the privileges of the House, and which had been contended for in the last debate as the most important of all others. Mr. Wigley said, that having come into the House nearly at the conclusion of the last Parliament, he had in deference to the House taken no part in an Impeachment which they had originated ; but he must own, that he had not been able, by attending to the evidence, to conceive that any of the charges had been made out. Not one of the acts of cruelty had been proved against Mr. Hastings, and all the evidence had been from hearsay ; in contradiction to which they had received addresses from India, full of the good reports of all ranks of people who had been witnesses of the Governor General's conduct. Mr. Wigley said, in the last debate on the subject, it had been contended, that the new Members might have the evidence printed by the Lords, and thus make themselves masters of the subject ; but those who had argued in that way were mistaken, because he had seen it since, and it said expressly, "Printed for the use of the Lords only." Mr. Wigley added several remarks to shew that the Trial ought not to proceed, and concluded with declaring, that as he could not agree to the Motion, he would take the sense of the House upon it.

Mr. Ryder said, he rose in rather a particular predicament, having never given a vote on any of the proceedings of the Impeachment. He could therefore view the question with an untainted eye. Mr. Ryder said, it was five years, he believed, since the first charge against Mr. Hastings had been brought forward in that House, and three years since the Trial had commenced. He observed, that the object was, to prove to opulent guilt and successful op-

pression, that no time nor power would be able to evade the punishment due to such crimes ; and this was necessary, in order to strike a terror to the present, and operate as a warning to future governments. That being clearly the object, let the House consider how the matter stood at present. Three of the charges were gone through with, viz. that of Benares, that of plundering the Princesses of Oude, and that of the Presents, and these three were stated to contain fifty facts ; surely then sufficient progress had been made for the purpose of example ; if the Defendant was innocent, he might be acquitted ; or if found guilty, enough was done to ground punishment upon, and prevent others from following the same example. The simple fact, Mr. Ryder said, was this : A British Governor had been on his trial for three years, which was of itself a very severe punishment ; what he would wish, therefore, was, that the House might pause then, and as it was their design, if not their duty, to take the shortest road to speedy and substantial justice, to do it in the most effectual manner ; and as every end would be answered by stopping where they were, to call for immediate judgment, and proceed no further. This, Mr. Ryder contended, would strip the Impeachment of its terror, but nevertheless meet the general wish of all parties ; he therefore would move that the latter part of the Motion, the exception, be left out.

This amendment was seconded, and read from the Chair ; when

Mr. Dundas rose and said, he must object to this amendment, and he could not help thinking but that his Right Hon. Friend had not considered the subject with his usual accuracy. Mr. Dundas contended, that the House were bound in duty to consider the original Motion as exactly the same as if it came from the Managers, who must be supposed to be better judges of what was capable of immediate proof, and most necessary to be established, than the House at large. Mr. Hastings, he observed in the Defence which he had formerly set up, had said it was true, that he had done what they had charged him with, but that state necessity was the cause, and must be his justification ; it was necessary, therefore, to bring on the charge respecting the Contracts, Pensions, and Allowances, in order to prove that it was notorious profusion and extravagance, and not state necessity, that was the cause of Mr. Hastings's acts of violence and oppression. It was material, therefore, to go into that charge, because if the Right Hon. Gentleman opposite to him could prove that Mr. Hastings had squandered or expended more than he ought

to have done, then state necessity could not be admitted as a justification of the other part of his conduct. Mr. Dundas reminded the House, that the Managers had declared they could go through the charge in seven days, and therefore he thought that the House ought not to refuse the Managers so reasonable a proposition.

Colonel Phipps rose to support Mr. Ryder's amendment; but declared he did not stand in the same predicament, having voted for the Impeachment originally, and therefore he was bound to support it. The Colonel expressed his satisfaction, that the House had asserted its Rights in the former case; but gave his reasons for thinking there was no occasion to proceed further than to call for judgment. He observed, that great stress was laid on the Right Hon. Gentleman's declaration, that going through another charge would take only seven days; but how could that be ascertained beforehand? If they had only been able to get through three charges in three years, they might be another year at least in getting through the charge respecting Contracts: besides, that of all others was the charge most likely, from the complicated nature of the subject and the variety of proof necessary to establish it, to run into great length. They would have to prove that the Contracts had not been publicly exposed to the best bidder, that they had been corruptly given at prices unnecessarily profuse, and a variety of other facts that must be tedious in their investigation. Having reasoned upon this for some time, the Colonel said, he had sat upon the Committee mentioned by the Right Hon. Gentleman for ninety days, and that, from seeing the improbability of bringing the object to a speedy or effectual conclusion, the Committee had recommended it to the parties to drop their pursuit; which they at first refused, but afterwards, from being themselves convinced of the propriety of the advice, adopted it. In the present case, therefore, it appeared to him to be advisable to stop where they were, and for that reason he should support the amendment.

Colonel Macleod rose again, and was on his legs for some time; but we could not hear distinctly any part of his speech, except the beginning of it, in which he complained of a different Motion having been brought forward than that the House had been taught to expect, and said, Mr. Hastings was the common theme of praise and admiration throughout India.

Mr. Jekyll rose to reprobate the doctrine broached by Mr. Dundas, as the most extraordinary that had ever been broached within those walls; and he could not help wondering that so monstrous a proposition

should come from a Gentleman who had received *some degree* of legal education; though he had thought proper, either for the greater lucrativeness of the situation or his own convenience, to quit his profession, for the place of Treasurer of the Navy and other offices. Mr. Jekyll said, the proposition laid down by Mr. Dundas was, that after three separate and distinct charges or bills of indictment had been found and established by proofs in a great variety of instances, another bill of indictment was to be preferred before the same tribunal, in order to afford an opportunity of proving the facts charged in the former indictments, and preclude the defendant from the aid of his defence: he would venture to pronounce such a proposition contrary to the practice of every Court of criminal Judicature, and the most monstrous that had ever been heard within those walls, or that ever before came from the mouth of a Lawyer.

Mr. Taylor said, he never had heard more extraordinary reasoning from any professional man. Mr. Taylor charged Mr. Jekyll with having mistaken the meaning of the Right Hon. and Learned Gentleman, and that, had he not well known that his Hon. and Learned Friend had been bred to the law, he should have been led to imagine that he was himself deficient in legal knowledge. Mr. Taylor said, it was notorious that the Managers had offered to try the articles charge by charge, but that the Lords had expressly directed them to go through the whole, as they would consider them collectively as one charge only. He contended, that what Mr. Dundas had said was strictly conformable with the practice of the Courts and the rules of proceeding, and at the same time perfectly fair and reasonable. Mr. Taylor complained that sufficient credit seemed not to have been given to the Managers of the Impeachment, whole industry and attention he was convinced entitled them to the good opinion and confidence of the House. He said, if it was thought that they merited censure, it would be fair for those who thought so to speak out at once, and vote a censure. He reasoned for some time upon this point, and declared that he highly approved of his Right Hon. Friend's Motion as originally moved.

Mr. Ryder rose to exculpate himself from having given any occasion to the Hon. and Learned Gentleman to complain of injustice done to the Managers. He had said nothing that went either to approve or to censure the Managers of the Impeachment, but had confined himself wholly to the advantage that he thought would result from calling for judgment on the charges already proved.

The Chancellor of the Exchequer declared that

that he must differ in opinion from an Hon. Friend of his, who had moved an amendment to leave out the concluding paragraph of the Motion, and which had been seconded by another Hon. Friend of his, and was rather surprised that his two Hon. Friends should have so done, since, if their proposition was to be acceded to, it would in a great measure tend to overturn the advantage of the House having come to the Resolution, that an Impeachment was pending *in statu quo* notwithstanding a dissolution, and to render it altogether useless, by proving that the House was incapable of going on with any further charge. The Chancellor of the Exchequer contended, that it was highly necessary to go on with the charge concerning Contracts, Pensions, and Allowances, as well in assertion of their right, as with a view to shew that there was no such state necessity as that which had been set up as the defence of Mr. Hastings; but that it had been owing entirely to his own conduct, and was an additional and essential crime in him to have created it. An Hon. Friend of his had said, that the Charge of Contracts, Pensions, and Allowances was peculiarly complicated and difficult, so that instead of seven days, which the knowledge of the Managers had enabled them to state would be fully sufficient time for them to prove the averments in, it would be more likely to last another three years. For his part, he saw no reason to entertain any such apprehensions. There appeared to him to be a possibility of there being more than one case under each head that might be perfectly simple, and capable of proof in a very short time. With a view to prove it, he put an hypothetical case or two, and shewed that if it could be made out that Mr. Hastings had given contracts corruptly, or made improper allowances, the doing of either was highly criminal. "Suppose," he said, "that it could be established that an allowance of twenty thousand a year had been given to a Commander in Chief out of the Revenue of Oude, while he was serving afterward in the Carnatic, and at a time when he was in possession of other very great means of income, and that such allowance had been given in direct defiance of the Company's express orders to the contrary. Would not every man agree, that notwithstanding the Commander in Chief was a great and gallant officer (and he was sorry to add, that he was now no more), such an allowance, made under such circumstances, was an aggravation of the other flagrant and enormous offences charged against Mr. Hastings?" Gentlemen, he observed, had laid stress upon the circumstance of the Trial having continued three

years already, and had reckoned by the Rule of Three, and taken every advantage of that mode. In some part of their argument they contended, that the Trial had lasted three years, and yet only three charges had been established; and in another part of their argument, taking hold of what had been stated in the Right Hon. Gentleman's speech, they had said, that fifty charges having been proved, there was no occasion to prove any more. The fact, however, was, that the three charges had been gone through in about seventy days; and he saw no reason why the charge respecting Contracts, Pensions, and Allowances might not be gone through in seven days, or less, if they contrived to go into the Hall sooner, or continue there longer every one of the days. The Chancellor of the Exchequer said, if it should turn out that Mr. Hastings was innocent of all the crimes imputed to him, in that case he must agree that it was a hardship for him to have been so long on his Trial, but it was a hardship inseparable from the nature of the trial. If, on the other hand, he should be convicted, although the time of the Trial would go as a part of the punishment, it would fall far short indeed of what such heinous and flagrant offences as had been imputed to him merited. After reasoning very ably on the subject, Mr. Pitt turned his argument against Mr. Jeckyll, and animadverted on what he had said of Mr. Dundas in terms of neat but pointed severity. He said, he entertained a very great respect for the talents of the Hon. and Learned Gentleman both in and out of that House, not doubting but he could apply them to any subject; he could not however think quite so highly of them as the Hon. and Learned Gentleman seemed to do himself. The Hon. and Learned Gentleman might in his opinion have spared the supercilious compassion which he had expressed for the paucity of legal knowledge of his Right Hon. and Learned Friend near him, because from the turn of the Hon. and Learned Gentleman's argument, the paucity of legal knowledge might with the greater propriety have been supposed to belong to himself. The Hon. and Learned Gentleman had charged his Right Hon. and Learned Friend with having said, that it was now proposed to send another bill of indictment before the Lords after having established three distinct bills of indictment, in order to supply proof of the charges contained in those former Bills of indictment; and this the Hon. and Learned Gentleman had termed a monstrous proposition; and a monstrous proposition it would have been, if his Right Hon. and Learned Friend had laid down any such proposition; but the fact was, his Right Hon.,

Hon. Friend had not said any thing at all like it. Mr. Pitt then repeated what Mr. Dundas had said, and observed, that he little expected that an accuser's endeavouring to foresee and do away the effect of the presumed defence of the accused beforehand, would by a Lawyer have been deemed either an act of injustice, or an unwise or unusual piece of conduct. It was, he said, extremely easy for any Gentleman to create a monstrous proposition, merely for the sake of impugning it to another; but he feared, though his Right Hon. and Learned Friend had changed his profession, the Hon. and Learned Gentleman behind him would not continue his with equal lucrativeness to himself, or with equal advantage to the Public, if he conformed his practice to his arguments.

Mr. John H. Stanley said, the debate had taken a very extraordinary turn, and that the question he had expected to have heard brought forward, had been one merely on the expediency of going on with the Impeachment. Mr. Stanley intimated a wish that some amendment to that effect were proposed.

The Speaker said, if the Hon. Gentleman thought proper, he might move such an amendment.

Mr. Jekyll, having conferred for a moment with Mr. Stanley, rose, and moved to insert the words, "that these proceedings be continued no longer."

Some little difficulty arose upon the rule of order, the Speaker stating, that he conceived the words then moved as an amendment must be first disposed of, as they would come in after the words "Warren Hastings," in the early part of the original motion.

Mr. Fox said a few words to order, stating his opinion, as far as recollection served, to be, that the question should be put on the omission of the remainder of the motion.

The Speaker shewed that the insertion of new words must be put as the first question.

Mr. Ryder consented to withdraw his amendment for the present.

Mr. Wilmot said, he should object to the last amendment, but that he wished to say a few words upon the amendment that had been moved by Mr. Ryder, when, by having disposed of the last amendment, that should be brought forward; and therefore he would reserve himself till that time.

Mr. Serjeant Waton rose to deliver his opinion very shortly, and to state, that no man in that House could be more indifferent to the party concerned, as he knew not Mr.

Hastings, nor had any connection with him or his friends. The Serjeant proceeded to state his sentiments on the original question, and the different amendments that had been proposed; but the House grew so impatient and so clamorous for the question, that he was soon obliged to sit down.

After Serjeant Waton sat down, Major Scott rose, and there was a general disposition to hear him, though the House was much exhausted; but on the question being called for by some Gentlemen, the Major said, if upon such a subject as was then before the House, any Gentleman was not disposed to listen to him for a few minutes, he would instantly sit down; on which there was a general cry of *Hear! hear!*—The Major then observed, that he was under a very considerable embarrassment, for he had come to the House, with many other Gentlemen, in the fullest confidence that the question moved would be, according to what Mr. Pitt had formerly stated, the question of Discretion, and upon that he had something to submit to the impartial consideration of every part of the House, and particularly of those Gentlemen who had not been Members of the last Parliament; but to his astonishment the original Motion was to worded as actually to preclude all consideration of that matter which he had meant to submit to the House, and the amendment was merely to close the Impeachment as it stood, which naturally implied, that the House had determined it should go on.

Here Mr. Fox rose, not by any means, he said, to interrupt the Hon. Member, but to state that the point would be gained, if he moved an amendment now, which he really thought would have been done early by another Hon. Gentleman (Mr. Baskard).

Major Scott then proceeded. He said, he would not trouble the House with any long detail; but, putting Mr. Hastings totally out of the question, there were circumstances in the present Impeachment which involved the honour of the House in a very peculiar manner indeed; and he could not conceive how it was possible for this Parliament to go on with the Impeachment, until they had some information before them. He would illustrate this merely by stating what passed respecting one article, and all the others were similar. The Benares charge, as originally presented by an Hon. Gentleman (Mr. Burke), was the size of a pamphlet. It contained an infinite variety of allegations. These were all stated to be criminal by the Right Hon. Gentleman who moved that charge [Mr. Fox]. A very high authority in that House [Mr. Pitt] not only justified Mr. Hastings, but pronounced all the acts stated

to be criminal to be highly meritorious, one excepted; but the Motion before the House was, that in the charge there was something worthy of Impeachment. There was not, as there ought to have been in strict justice, a separate question on each criminal allegation, and when the Committee framed this matter into an article, they very naturally pronounced all the allegations criminal, argued them so before the Lords; "though," said the Major, "I take upon me to say, that no man can tell what were the sentiments of the majority of the House upon the Benares article, since the Minister, who promised to move amendments consonant to his own ideas, never performed that promise. There is another extraordinary circumstance in these articles. It was strongly contended by leading authorities (Mr. Pitt and other Gentlemen), that no act done by Mr. Hastings fifteen years ago, communicated to the King's Ministers and the Court of Directors prior to three several parliamentary appointments, could possibly be a matter for enquiry; yet the House passed, without enquiry or debate, articles in which a great variety of circumstances that happened in 1772 were alleged to be criminal. Are these matters to be now dropped for ever? Is this House to give Mr. Hastings no satisfaction upon these points? The Right Hon. Gentleman (Mr. Burke) says, that infamy must rest somewhere, and then he asks if the articles are true or not? Why, Sir, if it can be done without disrespect to the late House, I say, they are many of them grossly and palpably false, or, if they are not so, the India Minister has presented false accounts to this House, and entered false Resolutions upon your Journals. The fact is undoubted, and I defy the united abilities of all the orators in the world to contradict it. It is notorious to all England, to all Europe, and to all Asia. Surely, Mr. Speaker, this House will pause a little before they sanction such absurdities. The articles state, that Mr. Hastings has materially injured the revenues, and has oppressed, ruined, and destroyed the people of Bengal. Your table is covered over with proofs of the falsehood of these allegations. The India Minister has opened a Budget annually for the four last years, in which he has given you an account directly the reverse. It is proved that he is in the right, by the evidence of figures, by evidence in Westminster-Hall which no man can do away. The fact is notorious to the whole world. Does not the House know that Mr. Shore, late a member of the Supreme Council, and a Gentleman of the fairest character, has solemnly deposed, that Bengal has been in a progressive state of improvement under the

British Administration? The Right Hon. Gentleman (Mr. Dundas) talks of the importance of these articles, and of this prosecution. He voted for the articles, but does he know that I can produce his own signature in full approbation of those very measures and principles which the articles condemn in the strongest manner? Sir, the Right Hon. Gentleman not only approved of the engagement which Mr. Hastings entered into with the Nabob Vizier, but when Lord Cornwallis wrote home that he had adhered to it, and to the principles on which it was formed, the Right Hon. Gentleman, and others of the King's Ministers, signed a letter in which Lord Cornwallis is told, that after an attentive perusal of the Minutes, &c. on the subject of that arrangement, they approved it, and the principles on which it was formed. Yet words cannot be found by which both the arrangement and the principles could be more strongly condemned than they are in the articles of Impeachment. How could this have happened? Why, Sir, but one way: Because the late House did an act that in my opinion disgraced it, though I do not wish to speak of the proceedings of that House with disrespect. They passed thirteen of the twenty articles without reading a line of them. This fact is true, and I will prove it at any time by a reference to your Journals; then let me implore Gentlemen to consider in what absurdities this proceeding has involved them. Here, in one of the articles, Mr. Hastings is stated to be highly criminal for putting all the power of Oude into the hands of so inopprobrious a tyrant as Hyder Beg Khan, for so he is termed in the articles: yet under this system, approved by the King's Ministers, and acted upon by Earl Cornwallis, every rupee of the subsidy is regularly paid up; and last year, when in consequence of the war his Lordship was in great want of money, he wrote to the Vizier and to Hyder Beg Khan, requesting some payments in advance, Hyder Beg immediately sent him bills for ten lacks of rupees, and received a letter of thanks in the strongest terms, with another to the Vizier, of which I will read a sentence:

June 17, 1790.

"I Cannot omit also at this period expressing my sentiments at the measures of your Minister Hyder Beg Khan, whose conduct I consider as deserving of every encomium; and in this particular instance of his exertion, he has certainly shewn his attachment to the Company, and his zeal for the preservation of the happy intimacy between us."

"Now, Mr. Speaker, let me put this seriously to every man of honour in this House:

Is no reparation due to Mr. Hastings for the universality, if I may so call it, of the accusation against him in these articles? You now mean to confine yourselves to a few points; but are all these charges to remain upon your Journals, though you know them to be false? Was it nothing to arraign Mr. Hastings at the bar of the Lords, and put him to answer articles presented in the name of the late House, which that House never read? To have compelled him to defend all those systems under which Bengal is governed at the present moment, as if it was criminal in him to have formed them, is a most cruel oppression, and a monstrous absurdity. Surely, Sir, these are points which, in justice to your own honour and to Mr. Hastings, you ought to go into in the first instance. Another charge is the wanton waste of the public money for private purposes. Now, Sir, without going into detail, I do take upon me to affirm, that if you take the last year's peace establishment of Mr. Hastings in Bengal, and that formed by the Board of Control, the latter is more than one million sterling higher than Mr. Hastings's; and it is a very curious circumstance, that owing to the extraordinary protraction of this Trial, we are involved in war before its close. But the expences now are upon a scale so infinitely beyond any former expence, that I will not venture to state the difference; and even the Bullock Contract, to which the Right Hon. Gentleman (Mr. Pitt) alluded, is, I contend, 15 per cent. higher, under all its circumstances, than the Bengal Contract so much reprobated; with this addition, that in the Carnatic there are more than Forty Thousand Bullocks employed, and in Bengal, in time of war, there were only Six Thousand Seven Hundred. I am not saying that any money is now improvidently expended, nor do I believe it was in the last war. But this I will say, that all these are points which the House ought to examine, and not blindly adopt whatever was done by the late Parliament. Before I sit down, I beg to call upon a very Hon. and respectable Friend of mine, who is well calculated to give his sentiments upon the past and present state of Bengal, and I hope, in justice to all parties, he will not withhold them."

Mr. Lushington, Chairman of the Court of Directors, then rose, and said, being twice called upon, he felt it his duty to state what would have come with more propriety from the Members of the Board of Control. The fact he believed to be true, that Bengal had for many years been in a very flourishing state, and was in a progressive state of improvement in all Mr. Hastings's administration. It was also true, that when Mr. Hastings came to the Government, the resources were little more than three millions a year, and when he left it they were more than five crores; an in-

crease of about two millions a year. That the systems established by Mr. Hastings were followed by Lord Cornwallis, with very little variation. That he thought it due in justice to Mr. Hastings to declare, that whatever might have been his intentions as to the vote of the expediency or in expediency of continuing the Trial, yet, the Chancellor of the Exchequer having mentioned a particular fact of Mr. Hastings having granted large allowances which he disapproved as a Director, he felt himself bound to vote for the question.

Mr. Sumner wished that the question of adjournment might be moved, in order to make the consideration of the amendments proposed the subject of a separate day's discussion.

The Speaker reminded the House, that if the question of adjournment were moved, it would supersede every other Motion.

Mr. Sumner thereupon moved it, when the strangers were directed to withdraw.

The House then divided,

Ayes for the adjournment 26—Noes 231.

The House next divided on Mr. Jekyll's amendment,

Ayes 54.—Noes 194.

They immediately afterwards divided on Mr. Ryder's amendment,

Ayes 79.—Noes 161.

The original question was then put, and carried without a division.

The Motion which followed in consequence was, "That a message be sent to the Lords, informing them that the Commons are ready to proceed on the Trial of Warren Hastings, Esq."

Agreed to, and that Mr. Burke do carry the said message. Also resolved, that

Mr. Burke,	Mr. Anstruther,
Mr. Fox,	Mr. M. A. Taylor,
Mr. Sheridan,	Mr. Dudley North,
Mr. Thomas Pelham,	Mr. St. John,
Mr. Windham,	Mr. Fitzpatrick,
Sir Gilbert Elliot,	Mr. R. Wilbraham,
Mr. Grey,	Mr. Courtenay, and
Mr. Adam,	Sir J. St. Clair Esqine,

be the Managers to make good the articles of Impeachment against Warren Hastings, Esq.

Adjourned at one o'clock.

THURSDAY, Feb 17.

Mr. Burke, attended by Mr. Fox and Mr. Pitt, and a great number of Members, went up to the House of Lords, and acquainted their Lordships, that the House of Commons were ready to proceed to make good the Articles of Impeachment perferred against Warren Hastings, Esq. and desiring that their Lordships would appoint a day for hearing the cause.

The Commons having withdrawn, the Lord Chancellor read the message as delivered by Mr. Burke, and moved, "That their Lordships do send an answer by messengers of their own."

It passed.

HOUSE OF LORDS.

THURSDAY, Feb. 17, 1791.

SIR Francis Molyneux announced a message from the House of Commons.

Mr. Burke, with Mr. Pitt on his right and Mr. Fox on his left, attended by the Committee, and upwards of one hundred Members, approached the bar.

"My Lords,

"The Message from the House of Commons is this: On behalf of themselves and all the Commons of England, they have resolved to continue the Impeachment of Warren Hastings, Esq. and they humbly desire your Lordships will fix a day for its recommencement."

Mr. Burke withdrew.

The Lord Chancellor read the message, and the House resolved, "to return an answer to the Commons by a messenger of their own."

Mr. Burke again appeared at the Bar, and the Lord Chancellor informed him of the resolution; and the Commons withdrew from the bar; after which

Lord Grenville rose and said,—"My Lords, a matter of the most serious nature is now before the House. The Message brought from the Commons involves in it a great constitutional question, namely, "Whether Impeachments abate with a dissolution of Parliament?"

This is a question of such importance, that the House ought to consider it with the greatest attention before a message be returned to the Commons.—I shall therefore move the House, "That a Committee be appointed to examine the Journals." Although the enquiry is of the most serious nature, yet it will not require any great length of time to complete it; and sure I am that your Lordships will not consider the motion as an intrusion upon your attention, when the object of it is of consequence and extent."

Moved a Committee—Ordered.

The Lord Chancellor—"Name your Committee."

Lord Grenville—"Earl Chatham, Lord Grenville, Lord Hawkesbury, Lord Sydney, Lord Kenyon, Lord Loughborough, Lord Amherst, Lord Cathcart, or any five of them together, with any other Peers that will attend."

Adjourned.

TUESDAY, April 19.

Lord Grenville brought up a Report from the Committee of Precedents, which he moved to have printed, and to be taken into consideration the first day after the Easter recess. Ordered.

WEDNESDAY, May 4.

Lord Grenville moved, "That the Report * of the Committee appointed to

* Of the contents of this copious, and, for the most part, uninteresting compilation, we can do no more than offer a sort of syllabus, pointing out the several objects to which the Committee directed their attention.

The first class consists of precedents of criminal proceedings in Parliament, on the petition or impeachment of the Commons, and these are chronologically arranged, from that against Richard Lyons, merchant of London, "for debts, extortions, and misdemeanors, as well for the time that he repaired to certain of the King's Council, as for the time that he was farmer of the King's subsidy and customs, &c." to that against Lord Lovat. The first was in the year 1377; the last in 1746.

The second class consists of precedents of criminal proceedings in Parliament originating at the suit of the Crown, or of individuals.

The third contains precedents of such proceedings in Parliament in civil cases, as appeared to the Committee likely to throw any light upon the matter referred to them.

The fourth contains such particulars of the forms of bail as appear on the journals of Parliament.

A table of the commencement, adjournment, prorogation and dissolution of Parliaments, from the 9th of Hen. III. to the 2d W. and M. anno 1690, is also subjoined, and a table of references to law cases.

examine precedents relative to the state of the Impeachment against Warren Hastings, Esq. brought up from the Commons, and proceeded upon in the last Parliament, be taken into considera-

tion on Monday se'nnight."

The Marquis of Lansdowne said, that this subject was equal in importance to any thing that was ever discussed in that House, and he hoped it would be deli-

In order to give our readers, however, some idea of this voluminous Report, contained in three hundred and eleven folio pages, we shall present them with a slight sketch of a few of the cases of Impeachment adduced, as a specimen of the whole.

I. Richard Lyons, of London, merchant,—for deceits, extortion, and misdemeanors, in the 50th of Ed. III. He was ordered to prison, to be disfranchised—and to be put to fine in ransom, and this was ordered by Parliament;—but on the last day of Parliament in Hilary, 51st Ed. III. the Commons thought the process hasty, petitioned the King, prayed Lyons might be released, and his goods and tenements restored; but to this the reply on the Lords roll was, "Be it remembered that *no answer* was given by the Lords, nor would be, as the said Parliament was departed before any thing could be done therein."

II. William Lord Latimer is the next case.—He was impeached by the Commons for deceits, extortions, and oppressions under the service of the King. He was adjudged to be guilty in full Parliament—but certain Lords, his mainpernors, brought his body before the King and Parliament—and by this mainpernors the Marshal let him go at large.

III. William Elys, of Great Yarmouth, for extortion. He was tried and found guilty by the Commons; but he being on bail until the determination of the Lords, a petition was presented, stating the proceedings of a new Parliament.—There was not any alteration of his sentence, and the Lords refused to *give an answer*. This was in the 31st of Edward III.

IV. John Pechee. This was an Impeachment for procuring an exclusive patent to sell wine, and for taking three shillings and four pence for every pipe thereof. He was tried and convicted by the Commons—but a petition being presented by the Commons from Pechee, alleging that he was not allowed Counsel, the same was referred to the Lords.—*No answer was given to the Commons.*

V. Lord John Neville, 50 Edward III. was impeached for purchasing, when a Privy Councillor, several debts due by the King, and in particular from *Lady Ravensholm*. Lord Neville put in his answer, witnesses were examined, and the Commons prayed judgment, that he should be ousted of all his offices. Shortly after he was ordered to make restitution to Lady Ravensholm.

N. B. This case, though placed among those selected as Precedents for discontinuing the Impeachment, does not appear to apply either for or against.

VI. An ordinance being made in the 50th of Edward III. that no woman, and in particular Alice Peers, should by way of maintenance, and for lucre, prosecute any matter in the King's Courts upon pain, &c. on the 22d December, in the 1st of Richard II. Alice Peers was charged with having broke the said ordinance, tried, and found guilty.—A petition stating errors in the proceeding, and praying to be re-heard, was presented in the next Parliament. The Lords decreed, that this could only be done by the King's favour—and no further proceeding appears in that Session. But in the 8th of the same reign, part of the ordinance was repealed by the King and Parliament, and in the 21st of the same reign, the matter being revived, Parliament determined that the case lay with the King, and he should determine as he thought wise and meet.

No further proceedings.

VII. Adam de Bury was impeached for deceits and wrongs (whilst Mayor of Calais) in the 50th of Edward III. on the last day of Parliament, and not appearing, it was awarded that all his goods and chattels should be put in arrest. Afterwards, in the next Parliament, 51 of Edward III. the Commons pray, that as Adam de Bury was wrongfully impeached in the last Parliament, he should be discharged and pardoned in the present one.—No answer given by the Lords.

VIII. John de Leycester and Wauler Spourier, in the same reign, and in a similar case, had their cause taken up by the Commons, who prayed release and discharge in the next Parliament.—No answer given by the Lords.

IX. Hugh Fattolf was in the same predicament at the same time.—No answer given by the Lords.

X. William de Weston and John Sienn de Gomenys, 1st Richard II.—The Commons pray, that all who have given up Castles beyond sea should be punished by judgment of the Lords. The answer and judgment of death is pronounced against them.
N. B. This does not seem to apply.

XI. In

berately considered in a manner suitable to its gravity. He had read almost all the pamphlets that had been written on the subject, many of them with great merit, bearing testimony of the great learn-

ing and abilities of their authors, many of whom had committed their names with their works, and, from the respect due to the authors, the works were regarded with respect; but after all he had read

XI. In the 2d of Richard II. the Commons pray the King and his Council, Prelates and to other Lords, "Whereas heretofore to Petitions and Bills delivered—in this present Parliament, and to all others that should be delivered in Parliament in time to come, good and gracious answer and remedy should be ordained before the departure of each Parliament, and that thereupon a statute to that effect might be made in the present Parliament, and sealed to remain in time to come"—the King answers, That to such Petitions delivered in Parliament, touching things that cannot elsewhere be determined, good and reasonable answer should be made and given before the departure of that Parliament."—*N. B. This appears a strong case in point.*

XII. The Bishop of Norwich in the 7th of Richard II. was accused by the Commons of not doing his service according to promise, and of receiving money from the King's enemies. He was ordered to prison until he made restitution. Annexed to this case, are two Precedents of the Commons having petitioned the Lords and received an answer—but it was in the same Parliament.

XIII. Sir William Elmsham, Sir Thomas Tryvell, Sir Henry de Ferriers, and Sir William de Fardon, were accused in the same Parliament, and obliged to pay back to the King what they had received, and pay fine and ransom, and Sir William Harnedon was to be at the King's mercy as to body and goods—all this in the same Parliament.

XIV. Michael de la Pole, Earl of Suffolk, Chancellor of England, was accused by the Commons—Judgment given against him, a fine and ransom.

XV XVI. XVII.—Sir Robert Belknap and others in the reign of Richard II. were impeached by the Commons, for signing certain papers at Nottingham, and the Commons prayed they might be adjudged traitors. The Lords took time to the following Friday, and adjudged the said Sir Robert and others to be traitors.

XVIII. In the same Parliament Blake and Usk were impeached by the Commons, and executed the day after they were found guilty.

XIX. The Bishop of Chichester was impeached by the Commons, the same Parliament, for exciting Sir Robert Belknap. The Lords took time to consider this case, as well as that of Sir John Beauchamp, De Holt, and others, and having adjourned for Easter, resumed the business, and found them all guilty of high treason.—*N. B. This case seems to go to the point of adjournment only; but that which follows seems to be more material.* For in this Parliament all the Lords, spiritual as well as temporal, then present, claimed, as their liberty and franchise, that the weighty matters moved in this Parliament, and to be moved in other Parliaments in time to come, touching Peers of the land, should be proceeded upon, adjudged, and discussed by the course of Parliament, and not by the civil law, nor the common law of the land used in other inferior courts—and this was granted. This Parliament, by common consent, was adjourned till after Easter, and new writs made out. But all matters stood as they were when they met after Easter, and the Lords pursued the request of the Commons as if no adjournment had taken place.

XX. In the 21st Richard II. Thomas Arundell, Archbishop of Canterbury, was impeached, and he, having confessed, was adjudged guilty of high treason.

XXI. Sir Thomas Mortimer, in the same year, was impeached by the Commons, and after adjournment pending the trial, it came on, and he was tried and found guilty.

XXII. In the same year Sir John de Cobham was impeached, adjudged a traitor, and banished to perpetual imprisonment in the Isle of Jersey.

XXIII. The Duke of Suffolk, 28th of Henry VI. prayed that he might be accused and heard to answer, in order to clear himself from aspersions. He was tried by the Peers, and the King banished him the realm. Against this punishment the Lords protested, because it was without their consent.

XXIV. The Lord Chancellor St. Alban and Bishop of Llanbaffe were impeached in 1670. The Chancellor fined and imprisoned, and the Bishop admonished.

The above four were all in the same Parliament.

XXV. The following are strong cases in point. Matthias Fowles, George Geldard, and others, were impeached by the Commons on the 2d March 1620, and committed to prison. On the 26th of April Fowles is brought to the bar, and the charges against him read—*to which he makes answer.* Depositions are read and witnesses examined. On the 27th he

on that subject, he must confess, that it was not totally satisfactory to him. The Gentlemen of the Long Robe were entitled to respect from their profession. It was a liberal profession, and he had too much gratitude to the memory of those lawyers who, on former days, had exerted their superior abilities in the service of the public, by stating and giving their sage advice on critical occasions,

again appears at the bar, and witnesses are examined. On the 15th May he is admitted to bail—but after several adjournments, Parliament is dissolved on the 28th February 1621—and all further proceedings cease.

XXVI. Sir John Eliot, impeached in the year 1621, and after various adjournments Parliament is dissolved before the trial finishes. No further proceedings appear in the next Parliament.

XXVII. The Bishop of Norwich was accused before Parliament 22d Jac. II. but Parliament was dissolved by the King's death before the trial finished. No further proceedings in the next Parliament.

XXVIII. The Duke of Buckingham is impeached by the Commons 2d Car. on the 9th May 1626—puts in his answer on the 8th June following, and requests the House to expedite the cause, but on the 15th of the same month the Parliament is dissolved; and no further proceedings were carried on in the next Parliament.

XXIX. The Earl of Suffolk is complained of by the Commons—The Lords take time to consider an answer—Parliament prorogued before the answer is given. No further process in the next session.

The following is a list of the Impeachments in the Long Parliament of Charles the first:—

Earl of Strafford,
Archbishop of Canterbury,
Bishop of Ely,
Six Judges 1640,
Lord Keeper Finch,
Bishop of Bath and Wells,
Sir George Radcliffe,
Sir Robert Berkeley,
Doctor Cozens,
George Benson,
Sir Edward Dering,
Mr. Richard Spencer,
Sir George Strode,
Earl Northampton,
Sir Richard Gurney,
Lord Strange,

Six Judges, 1641,
Inigo Jones,
Thirteen Bishops,
Earl Bridgewater,
Twelve Bishops,
C. Neal,
Sir Edward Herbert,
Lord Digby,
Sir William Wilmer,
Henry Hastings,
Marquis Hartford,
Mr. Wyde,
John Brouce,
Lord Mountmorres's complaint against the
Privy Council of Ireland.

XXX. William Drake was impeached in the name of all the Commons of Great Britain in 1660; but the Lords, thinking that the trial could not be finished before the dissolution of Parliament, ordered the King's Attorney General to proceed against him by the common process of law.

XXXI. Viscount Mordaunt was impeached the 3d of January 1666: on the 16th, the Commons by message reminded the Lords of the impeachment; on the 17th Lord M. put in his answer; on the 21st a day was appointed; several conferences were held about the mode of proceeding. Parliament on the 8th of October was prorogued, and re-assembled on the 25th of July, but there was no further notice of the impeachment.

XXXII. Earl Clarendon was impeached by the Commons November 12, 1667; but he withdrew himself, and was attained, all in the same session.

XXXIII. Sir William Penn was impeached in the same year; but the trial not being finished before the prorogation of Parliament, it died away. The next session it was not proceeded upon.

XXXIV. On the 5th December 1678, the Earl of Arundel, Earl Powis, Lord Fellars, Lord Percy, and Viscount Stafford, were impeached by message from the Commons; on the 30th of Dec. the King, being come to the House, said, he was unwilling to prorogue them, as he wished them to prosecute the discovery of the plot; but he did prorogue them to the February following, and on the 24th of January dissolved them. A new Parliament met on the 6th of March: on the 11th of March a Committee of Privileges was appointed.

not to regard their names with reverence. Nor did his reverence for the learned profession abate or lessen, when he reflected on the abilities and character of those who are at the head of the profession at the present day. But he must lament that the Gentlemen of the Law who had taken part in the discussion of this subject, had obscured instead of explaining it. They had covered and hidden the subject itself, by the formality with which they had endeavored to discuss it. They had loaded all they had to urge with technical distinctions, and merely professional remarks. They had in this (as was too often the case with Gentlemen of the Long Robe) defeated that liberality of principle which teaches men of exalted understandings to reduce a question to the simple elements of its own merit, without incumbering it with extrinsic matter. It should have been reduced to a point of simplicity of law arising out of the Constitution of this country.—There were two points on which the whole of the liberty of every individual in this country entirely depended. One was the *Trial by Jury*. The other was a maxim arising out of the elements of justice itself, as applied to the inhabitants of a free State; this was, "That no man shall, under any pretence whatever, be tried upon any thing but a *known law*."—This maxim constituted almost all the difference between a *Free State* and a *State of Despotism*. These points he only now hinted, in order that their Lordships might take the subject properly (as appeared to him) into consideration. The question was not, "Whether they should try a Governor General accused of the worst vices that could disgrace the representative of

a Great Country?" not, "Whether he was innocent or guilty?"—or whether honour or disgrace ought to be the lot of his accusers? but, "Whether their Lordships should proceed arbitrarily and tyrannically, without the sanction of a known law, or would violate their duty upon the idea of public convenience?" Of the trial by Jury it was impossible for any man to have a higher respect than himself; he revered and adored it. But if a question (which indeed, happily for us, could not be put to any man in this country) were to be put to him—"Which would you prefer, as you or have I ut one—*a trial by Jury* upon what may be called the law, or a trial by Judges, with knowledge of, and integrity to administer, a known law?" he believed that, much as he adored the trial by Jury, he should, under such circumstances, prefer the trial by a known law.

Having stated these points, he said, merely to draw their Lordships' serious attention to what appeared to him to be the real point, he entreated their Lordships to peruse attentively every thing that had been urged on this occasion, and not be deterred by the authoritative tone in which some, and the affected clearness in which others had stated the case, but to think boldly for themselves, and to think seriously too. There was time enough for the rational exercise of both, and he hoped, that on that day, not one Noble Lord would be unprepared to give his voice on this occasion from his own conviction; and he trusted too, that not one Noble Lord who had a right to sit in that House would be absent without being able to assign a very sufficient reason for his absence. As this country

appointed to find out in what state the impeachments brought up in the last Parliament now stand: on the 13th of March, Parliament was prorogued to the 16th; on which day a motion was made and agreed to, to consider whether the last Parliament could be considered a session (the Judges to give their opinion); and this was the determination.—But it was a session, in relation to acts of judicature of the House, but not as to the determination of laws, determinable upon the end of a session of Parliament; and concerning the state of Impeachments, that—*they remained in statu quo, the dissolution of the last Parliament not altering the state of any impeachment brought up in that Parliament.*

A dispute having arisen in respect to Earl Danby's pardon, Parliament was prorogued to the 12th of July, after the five Lords had been brought to the bar, their Impeachments read, time given to answer, and Counsel appointed; and on the 12th of July that Parliament was dissolved.—On the first of October 1680, the new Parliament met, and began the trials with that or Viscount Stafford, who summed up his evidence on the 3d of December, and desired that his Counsel might be heard on points of law, one of which was—*Whether proceedings by Impeachment ~~at~~ ⁱⁿ dia or did not continue from Parliament to Parliament?* which, upon consideration, was determined not to be a proper objection, as—*impeachments did continue.* On the 7th of December, he was found guilty, and sentence pronounced the same day.

never had a question before its Parliament that more materially involved all the liberty of all its inhabitants, he was astonished that the Noble Lord who made this motion had not also moved, That the House be summoned; he should take the liberty of doing it himself. He therefore moved, "That their Lordships be summoned on Monday next night." Ordered.

The Marquis of Lansdowne said, he hoped as an order was made for summoning their Lordships, that it would be done in as exact and particular a manner as possible; and he trusted that no Noble Lord who had a seat in the House would absent himself, except he could give a very serious reason indeed for so doing.

MONDAY, May 16.

The order of the day being read for the House to take into consideration the Report of the Committee appointed to search for Precedents relative to the Trial of Warren Hastings, Esq.

Lord Porchester said, he did not then mean to trouble their Lordships at any length upon the subject; he only meant to make a motion which might bring the merits of the Question fairly and fully under discussion. He had, his Lordship said, read the printed Report, and had formed a very clear opinion on the subject; but that opinion he reserved, till he should have an opportunity of hearing the sentiments of Noble and Learned Lords. His Lordship then moved,

"That a message be sent to the Commons, to inform them that they (the Lords) were ready to proceed on the Trial of Warren Hastings, Esq."

The Lord Chancellor left the woolsack, and said, he rose not to enter into the question, but merely to state, that in his apprehension that was not the proper mode of discussing the order of the day, which was, to consider the Report of the Committee. All their Lordships, he observed, would at least agree with him, that the laying down a rule by which not only the fate and fortune, but the liberty and lives of their Lordships were in future to be determined, was a subject of very important consideration. The Report, his Lordship thought, ought to have been referred to a Committee of Privileges; that would have been most agreeable to the rules and practice of the House with regard to Impeachments, and when the subject should have been considered by the Committee, his Lordship said, it might then be reported to the

House, who would have an opportunity of reviewing, and ultimately deciding upon it. Their Lordships had been desired to send a message to the Commons, stating that they were ready to proceed on the Trial of Warren Hastings, Esq. After they had searched for Precedents, that day had been appointed to take the Report into consideration, whether the Impeachment abated or not by the dissolution of Parliament; and therefore that question must be considered, before the other could possibly occur. After they had determined that the Impeachment did not abate, but remained in *statu quo*, then it might be very proper to consider whether a message, such as had been moved for, ought to be sent to the Commons, to inform them that their Lordships were ready to proceed in the Trial. Three questions immediately occurred, which, his Lordship said, he should have conceived to be very proper to be referred to the Committee of Privileges, and afterwards to the House. The first of these questions was, Whether an Impeachment, brought up and proceeded on in the last Parliament, was now in any degree depending? 2dly. That if the Impeachment were depending, was it depending in *statu quo*? 3dly. By what process, or by what form of proceeding, that man was to be called on, who, if he understood the question rightly, was now neither a prisoner nor under bail? and whether, in case that man did not appear, they could sue his recognizances? These three questions, his Lordship said, appeared to him to be exceedingly important in the present enquiry; and the general proposition, involving the fate and fortunes of mankind at large, was of much more importance than what became of the particular subject. He thought if the printed Report was fairly extracted and historically deduced, it would amount almost to a demonstration that there had never been such a proceeding as a continuance of an Impeachment after a dissolution. It happened unfortunately, his Lordship observed, that the Report had not been printed before the holidays, as they might have been better prepared for the discussion of the subject, had their Lordships been able to have perused the Report earlier. The Report, his Lordship said, was imperfect, and for his part he had no knowledge on the subject except what he derived from the Report. He thought it was essential that

that some other things should have been included under the first head; as for instance, whether they sent a message to the Commons subsequent to the Prorogation or Dissolution, and whether the House of Commons sent any message, or set on foot any measure, in consequence. There was also another class of Criminal Prosecutions which his Lordship conceived might possibly be connected with this. With regard to Writs of Error, the Report, his Lordship observed, was still more defective. The Committee had stated merely what appeared to them on record, and had stated that only; it would have been material to have considered, whether it was true that a Writ of Error abated upon a Prorogation, as was determined in the year 1673. He meant not this by way of reproach, for, undoubtedly, the diligence of the Noble Lord had done a great deal; indeed, he wondered it had done so much. The Report however contained many defects. His Lordship thought this was too near a way of considering a subject of so much importance, and he was afraid their Lordships could not do that justice to the subject which they meant. It was to be considered in the way in which it ought to be. If they were to follow the path of their ancestors, which appeared to him to be right, he should wish them to refer the subject to a Committee, and that a Committee should come to certain resolutions. The great object of their Lordships in this decision ought to be, to put it out of the power of a Minister at a future day to turn the decision any way he pleased, as it might suit his own convenience. He thought, therefore, it ought to be settled with the utmost gravity and solemnity. What might become of it afterwards the Lord only knew. Perhaps he might be accused of a pedantic adherence to precedents. His Lordship said, he alluded to cases then before the House. He had formed in his mind the outlines of the method which he conceived would be most proper to pursue on this subject; and if the motion of the Noble Lord was disposed of, he should, his Lordship said, feel a strong inclination that they should adopt the method which he had suggested.

Lord Abingdon said, he did not rise, as their Lordships might suppose, an advocate for Mr. Hastings, nor did he file an advocate against him. The

situation in which he stood, in common with the rest of their Lordships, as one of the Judges before whom that cause was, precluded and forbid him, whatever other Noble Lords might think, from taking or assuming to himself any such character. But he rose, although not an advocate on either side, to trouble their Lordships with a few words on both sides, not however with a double fee in his hand, as some advocates have done, but without any fee at all, as no advocate is willing to do; and this too not in point of argument, not to discuss the weight and balance of precedents that were upon their Lordships table, as the means of forming his judgment upon the question that was to be resolved, but simply and merely to express those feelings by which his mind had been affected upon the occasion. And here in doing this it was necessary for him to recur to that time when the Impeachment began; to its origin, when, like other individuals, he was led to look at it in the lump, not with the investigation through all its detachment of articles, not on the ground of its evidence, nor in other respects in the minutiae of detail, but on its political hinges and bearings, in its reasons, in its motives, in its causes, and in its effects. That this was his view of it in the first instance; and with that view, whilst he saw, on the one hand, a man who by his enterprize and exertions had, as it was said, *prospered* a great country to the British Empire, whether by right means or wrong he did not then enquire, but might be supposed them, first from the event itself, and next from the circumstance of those who were mostly interested in that event (he meant his employers the East-India-Company) having *una voce* approved his conduct; he had he saw this man made the objection of an Impeachment. On the other hand, he saw a man himself accused of having at the same period, and, as it was said, by worse means than those of a *want* of enterprize and exertion, *lost* a great country to the British Empire, ceasing with his accusers, his bitter enemies, in becoming an accuser of the man in whom, if there was guilt, he, this accuser, was himself a *particeps criminis*, by continuing him in the station in which he was, when, having the power, he might and ought to have removed him; he said, he saw this man *not* made the object of Impeachment.

peachment. The inference then he drew from this view of the subject was, that this Impeachment was a proceeding not founded in national justice, nor had it national honour either for its principle or its object; but that, like the witches cauldron in Macbeth, it was composed and made up of ingredients to raise a flame in the Country, not of justice, not of policy, not of wisdom, but a flame lighted up by the spirit of a jarring faction, concocted by the most noxious juices, created by the most heterogeneous mixtures, blown up by the breath of malice, fed by revenge, and kept alive by the fuel of animosity and invective. This was his inference. The next view he had of the business was, the Impeachment at their Lordships' Bar. And here he saw, and it was with pleasure he saw it, Mr. Hastings, like himself, triumphant and exulting in his situation; he saw him, like Hercules and the Hydra, surrounded and beset by a many-headed Monster, called a Committee of Impeachment, with fire in their eyes, and forked tongues in their mouths, branding him with the lightning of their looks, and pouring into the inmost recesses of his heart the chilling poison of their envenomed words; whilst he with the uplifted club of conscious innocence, as it would seem, in his hand, sat calm and undisturbed, and yet panting as it were for the coming of that hour of his defence, when to his assailants it might prove the hour of death and annihilation, but to him that of victory with accumulated honour. Thus he saw; but besides this he heard from one of the Counsel in pleading his cause, with a torrent of manly eloquence, and in a burst of language and of zeal which conviction only could have inspired, an appeal to God as the witness of his client's innocence, and calling down the vengeance of Heaven on the heads of his accusers, as their merited punishment for the falsity of the charges alleged against him. But what did he now see, and what did he now hear? He saw, he said, this very Mr. Hastings, not what he was, unlike himself, not, as before, panting for his defence, no longer triumphing and exulting in his situation, no more like Hercules with his uplifted club, but like Hercules indeed subdued, and with a diffidence in his hand; this was what he saw, and this was what he heard, and heard too often from Mr. Hastings

himself: "for," said he, "my Lords, his last address to your Lordships did not breathe that ardour of mind, and that magnanimity of spirit which either his previous conduct implied, or his character would have led one to look for. But this is not all. A dissolution of Parliament takes place, and this dissolution is to be made use of as an *extinguisher* to this Impeachment. Be it so then," said he; but his sense of the matter would be this: that instead of Mr. Hastings appearing as he was formerly wont to do, and as it was hoped he would do, like, the *pure* flame of the candle, his conduct, like the *stuff* of the candle which the extinguisher leaves behind it when the light is put out, and the flame exists no more, would be perhaps as black and as offensive to himself, as it would be to the rest of the world. There were his feelings, and he should be glad to have them removed; but if this could not be, let others feel for themselves. It may be said, indeed, that this was a *Trial* not only without example as to its duration hitherto, but in its continuance a persecution without end: to which it may be answered, that the duration is now proposed to be fixed, and the time to be limited, and yet the effect of a dissolution is preferred to this. "And now," said he, "a single word to the Impeachment itself." Whether a dissolution of Parliament abated an Impeachment or not, he knew not, nor had he studied to know. It was a question upon which not only Doctors but the two Houses of Parliament disagreed; and therefore, without saying "A pox on both your Houses," he would say, Who shall decide the point? But this he did know, that whether a dissolution abated an Impeachment or not, there were two strong reasons why it should, and there was one still stronger reason than both of the others why it should not. The first strong reason was, that the parties themselves are content to have it so: and the maxim of law is, "*consensus tollit errorem.*" The next strong reason is, that it would be removing a heavy yoke that has long been imposed on their Lordships' necks, making the case of the Noble Lord on the woolsack the case of all their Lordships, and bringing to his mind that Noble Lord's *emphatic* words upon this occasion, who, upon being asked some question respecting the Trial, said, as he had been told, "It is not Hastings's trial,

trial, it is my trial ;" as it certainly is so far as the patience of the House has been, and would be again, affected by it. But the one still stronger reason than both these against the abatement was this : if the legislature in its wisdom has thought it right to enact, as was done in the Act of Settlement, " That a pardon is not pleadable in bar of an impeachment," does not an abatement of an impeachment by a dissolution of Parliament rest upon the same ground of reasoning on which this clause was enacted, namely, the power of dissolution being in the hands of the Crown, " that it might defeat the whole use and effects of Impeachments, and destroy the chief institution by which government is to be preserved ?" But this was a question which he should not argue, leaving it to be determined by the better judgments of their Lordships, as he should be by the general sense of the House in the vote that he should give.

Lord Porchester said, the House had ordered a Committee to search for precedents, who had delivered in a report : that day had been appointed to take into consideration that report. He was, his Lordship said, of opinion, that the Impeachment did not abate, and he thought the motion he had made would bring before the House the question whether it did or did not abate. It was, in his Lordship's opinion, the proper way to consider the question in a full House; but if any noble Lord thought it would be better to argue it in a Committee, he might vote for so doing.

Lord Mulgrave said, the rights of the people of this country, as to questions of property, depended merely on precedent; he conceived, however, that the proceedings of that House were not to be guided so much by precedent as by their own discretion. Precedents, his Lordship thought, ought certainly to be followed where they were right, and were to be avoided where our ancestors had been guilty of error. There was a wide difference between the courts below and that House, with regard to the authority of precedents. The business of the House of Lords, as a Court of judicature, was, his Lordship said, to try great and important causes; causes that were too important for the inferior courts, and where the persons concerned were of great weight, and were beyond the

grasp of the ordinary Courts of Justice; such had been accounted the proper subjects of Impeachment by the House of Commons. The Courts below should be confined strictly to positive rules of law; but how did that apply to that Court, which was formed for great and extraordinary occasions? They could not, his Lordship conceived, be tied down by such rules. What had been done in former times was the best clue to guide them in their inquiries; but their Lordships must above all use their reason in every case that came before them. If there was a power lodged anywhere to defeat the Lords and Commons at the time they were coming to their conclusion, there must be an end to the power of the Commons to impeach, and of the Lords to decide. If their Lordships were to go back to the history of their country, they would find many things which were right to be done at the time they were done, but which would be highly improper at the present period. Lord Mulgrave next proceeded to the consideration of Precedents, and from the whole drew this inference, viz. that an Impeachment did not abate at the dissolution of a Parliament, but continued from Parliament to Parliament. The power of pardoning offenders was, his Lordship said, wisely conferred on the King, but in the case of Impeachment it was as wisely taken away. If the dissolution of a Parliament abated an Impeachment, it would, his Lordship observed, be in the power of the King at any time to annihilate all their proceedings.

Lord Radnor was inclined to think that the noble Lord who spoke last seemed to have drawn the proper inference; for if that inference was wrong, then proceedings, his Lordship conceived, must fail to atoms at a dissolution. A dissolution might take place at any time; it might be ordered in a moment when the evidence against a culprit appeared to be strong; when he had made a weak defence; after the verdict of " guilty" had been given; at any time, in short, before sentence was actually pronounced upon him; their proceedings might fall to pieces. His Lordship wished the business to be placed in a different point of view. " Suppose," said his Lordship, " a great trial were depending, and both the Lords and Commons were disposed to do ample justice; it might hap-

pen, contrary to the equity of the case, contrary to the wishes of all parties, contrary to common sense, that all their proceedings might go to nothing. If it were determined that the trial should go on, and Mr. Hastings did not appear, he wished to know whether the Court of Exchequer could estreat his recognizance. His Lordship moved, that the date of the recognizance be read, which was read accordingly; the recognizance bore date the 21st of May 1786. He then moved, that the words after *that*, in the motion of the Noble Baron, might be left out, and the following words be inserted in lieu of them, "That the Judges do meet on Wednesday next to deliver their opinions on the following question, viz. Whether by the said recognizance Mr. Hastings is still bound to appear before the Lords in Parliament when called on?"

Lord Loughborough thought it was improper to anticipate the question, and to refer it to the Judges then, when it might come before them legally afterwards.

Lord Hawkesbury considered, that in every Court there were rules of proceeding, and when they became the law of the Court they in fact became a part of the law of the land. His Lordship apprehended it was of the utmost importance to preserve in their decision as much uniformity as possible. Several questions had been proposed by Noble Lords, but the first question which he submitted it, ought first to be considered was, whether their Lordships *could and would* proceed? A question had been moved, whether Mr. Hastings was now in custody or not? It was a question for them to consider whether they would proceed or not. If their Lordships decided in the affirmative, they would next have to consider, if, when they went down to Westminster-hall, they did not find Mr. Hastings there, what was the most proper method of taking him into custody. But the first question, and upon which all the rest depended, was, whether the Impeachment remained in *statu quo*? His Lordship took this to be a question of the greatest magnitude, and therefore, he said, he wished to have moved the previous question. He was not, his Lordship declared, then sufficiently ready to enter into a discussion of the question.

The Marquis of Lansdowne said, this important question was opened with great candour by the noble Baron. He had stated that he had a clear opinion on

the subject, but that before he delivered that opinion he wished to hear that of Noble and Learned Lords. The motion certainly gave them an opportunity of considering the question, though perhaps not in quite so direct a way as was consistent with the dignity of that House. The Noble Lord on the woolsack had advised their going into a Committee, and it was certainly very material to go into a Committee, not only for the sake of obtaining freedom of debate, but also for the obvious and plain reason, that it gave them the opportunity of another and fresh consideration. This subject, his Lordship said, had been debated three days in the Commons, and their Lordships could not think it less incumbent on them to give it a full and serious consideration. Another question had been stated by a Noble Lord, namely, whether the proceedings were *in statu quo*? He was, the Marquis said, ignorant of both these questions. He considered it as a great legal, and not at all as a political question; "and God forbid," exclaimed his Lordship, "that Ministry should exert ministerial influence in it!" If they took any measures towards influence, they would dishonour and disgrace themselves. He declared he had had no communication with any individual on the subject, except two short conversations with the Noble Lord on the woolsack in the presence of the House. Every man in that House, his Lordship thought, ought to pay great attention to legal authorities, but not be entirely guided by them, although they happened all to agree in one point. He thought their Lordships were fully competent to form a correct and accurate judgment. Let the question be taken up on the ground of analogy, of precedent, or of general reasoning, it was, he conceived, their Lordships province to settle the proper mode of proceeding.

Lord Grenville said, he felt as strongly as any of their Lordships, that the question was totally unconnected with any system of government, or with any individual who had a share, or who hoped to possess a share, in the executive Government. Setting aside, therefore, all ideas of that sort, he should do what he had a right to do, and what he conceived to be his duty to do; he should deliver his opinion on the subject, honestly and without prejudice or partiality of any sort. He should have been, his Lordship said, for a direct way of bringing on the question; but if there was one way of considering the subject fully and fairly, and another

of only obtaining a partial view of the subject, he should prefer the first mode of treating it. His Lordship thought the merits of the question would come to be discussed with as much propriety from the motion of the Noble Baron who had introduced the debate, as in any other way; but if any Noble Lord entertained a doubt on the subject, it was his duty to come forward and state his doubts. He was, his Lordship said, one of those who agreed with the Noble Baron, in thinking that the impeachment was still depending, and that the motion must appear perfectly proper to all those who were of his opinion. He said, he should not enter largely at present into the question, but he thought the motion of the Noble Lord was in every respect as well calculated to bring the question as fairly, as fully, and as completely to a discussion, as any other motion that could possibly be stated. His Lordship said, he saw no advantage whatever in going into a Committee; as it was, every person would have an opportunity of debating the subject fully and freely. He did not conceive that any advantage whatever could arise from the House going into a Committee.

Lord King said, if the Noble Lord (Lord Hawkesbury) moved the previous question he would second it.

Lord Stormont said, the original motion had been completely destroyed, except the short word *that*, and the only thing to be considered then was, whether the word *that* should make part of the present question.

Lord Hawkesbury said, he would not move the previous question, because there was another question before the House.

The Lord Chancellor spoke to a point of order. He said, he had already stated, that he was doubtful whether this subject could be debated in a way that would be satisfactory to their Lordships' minds. If they decided at once on the original motion, it would be impossible for their Lordships afterwards to say a single word, if they entertained any doubts. He had read the report with a great deal of attention, and it seemed to him, he said, to be little short of demonstration, that by the habits and practice of that House, an impeachment was universally understood to abate at a dissolution. With respect to the abuse that the Crown would make of that power, that, his Lordship observed, was not a decisive argument, but only an argument of probability. He wished the question might be dis-

cussed with that gravity and that dignity which became the importance of the proceeding. His Lordship said, if the debate went on, and if he were not too much exhausted, he should state what appeared to him to be the outlines of the business.

The Marquis of Townshend said, Mr. Hastings had been tortured by delay, and he hoped that, without more delay, they would proceed immediately with the trial.

Lord Stormont thought this was not an improper time to go into the full discussion of the subject; he owned it would have given him great concern if a business of that magnitude had passed over, without having had the advantage of the opinions of Noble and Learned Lords, who spoke with superior abilities and advantage on every occasion, but more particularly where professional knowledge was wanted. If there were only one series of precedents, or no precedents at all, he should, his Lordship said, have no doubt on the occasion. He did not agree with those who thought that little or no stress was to be laid on precedents. Had there been one stream of precedents, he would have followed it wherever it went; but there were no precedents; and if he were to decide on the general and abstract principles of the Constitution, he should not entertain a particle of doubt that, by the dissolution of Parliament, an Impeachment did not abate. What, his Lordship asked, was the great aim and object of an Impeachment? It was to reach those great state offences which could not be reached so well in the ordinary course of justice. According to Sir William Blackstone, the aim and object of an Impeachment was to punish those offences which the individual Magistrate could not or durst not punish. What availed it, if an Impeachment, though it could not be defeated in one way, could be defeated by another? If a dissolution put an end to an Impeachment, his Lordship begged them to consider what the consequence would be: this might take place when a man, from a variety of crimes by him committed, had suffered greatly in his general character and in his general fame, and lay under a load of accusation, which it would be impossible for him to remove. If he had begun his defence, or gone through it, what a situation would he be in, if his prosecutor chose not to renew it! It was of the utmost importance to public justice, which was the concern of all,

his Lordship said, and of that person whose interests they were likewise bound to maintain, that in no instance whatever should he suffer, but by that condemnation which the justice, wisdom, and integrity of their Lordships pronounced upon him. On the other hand, he should not be safe by any other means, except by their Lordships performing a most agreeable duty in pronouncing him innocent. His Lordship next took into consideration many of the precedents, and argued upon them with his wonted ability.

Lord Stanhope said, that a Noble Baron had first moved, that a message be sent to the Commons, to inform them that their Lordships were ready to proceed in the trial. A Noble Earl, his Lordship observed, who spoke afterwards, made a motion entirely new except the word *that*, “that the Judges do attend next Wednesday, to deliver their opinions on the following question, viz. whether the recognizance entered into by Mr. Hastings was now in force?” These two motions ought to be considered as separate questions. His Lordship declared, he should say nothing on the first question, though he confessed he entertained but very little doubt on the main question; but in that as well as every other question, his mind was open to conviction. His Lordship could conceive nothing so absurd as a remedy given to the people of England, if it was in the power of any man living to deprive him of it. The Minister himself might be the object of the Impeachment, and if such an argument were to prevail how would his punishment be effected? It seemed, his Lordship said, to be incompatible with the idea of an Impeachment to believe that it abated by a Dissolution. His Lordship also thought it clear from precedent, that an Impeachment did not cease with a dissolution, but continued from Parliament to Parliament. The best way, in his opinion, would be to dispose of the two questions before the House, and then to proceed to consider, distinctly and in their order, the three propositions laid down in the beginning of the Debate by the Lord Chancellor.

The Lord Chancellor said, he should state what appeared to him to be the outlines of this business. And in the first place he should observe, that, whether Mr. Hastings had depopulated an extensive country and starved its inhabitants and reduced them to want of bread, or whether he had rendered our dominions in the East more populous and flourishing, was a question of no consideration in the present enquiry. The volume on the table furnished precedents to shew

how both Houses had proceeded in cases similar to the present. No precedents ought ever to be followed which would lead them to grind the property of individuals, and to torture their persons. It was one thing, his Lordship observed, to be tried by the laws of one's country, which were known and defined, and where every step of the proceedings would be foreseen; and another for a man to be tried by the pure discretion of their Lordships, without any regard to Precedents. If they were above all other rules, that House at least ought to be governed by those rules which it had laid down for its own observance. He was only anxious, his Lordship said, that they should weigh thoroughly, and be perfectly sure they did not depart from those principles on which Precedents either were or ought to be founded. If they departed from Precedents, their Lordships ought, he conceived, at least firmly to adhere to the principles on which they were founded. The first thing that occurred to him, his Lordship said, was the Precedents on Impeachments; and he thought it next to demonstration, on the subject of Impeachment, by the Commons, that Impeachments had been understood universally to determine upon the dissolution of the Parliament. He conceived it, his Lordship said, to be perfectly well settled, that while an Impeachment was depending, it was impossible to get rid of it without giving notice to the accusers. He took that to be an universal rule; and indeed if they did not give such notice, their Lordships would be guilty of manifest injustice to the accusers. If this rule of clear, natural, and obvious justice were laid down, his Lordship said, it would go a great way to answer some of the questions put by the Noble Viscount (Stormont), as, whether the Impeachment did or did not abate, &c. They could not take it two ways; they must be uniform and consistent; and if they laid down a position, they ought to follow it through all its consequences and windings. It seemed to his Lordship, that in every instance (and there were between twenty and thirty of them) it was clear that an Impeachment never was dropped without that sort of interference. Of this there were several instances, his Lordship said; as that in the case of Foulis and Geldart, wherein they considered whether they ought to renew the Impeachment; it was agreed that they should not go on with it. Another instance which occurred to his Lordship was, that of the Duke of Buckingham, in which the Impeachment dropped, but his crimes were not dropped; for he lost his life a few years after: they petitioned the King against him. These instances were sufficient to shew it had been understood by all men, that Impeachments did

did abate by a Dissolution. An able parliamentary man, about the time of James I. complained that Dissolutions were attended with these effects. In the case of the Duke of Buckingham, nobody, his Lordship observed, thought it was an existing prosecution; nobody complained of the House of Lords, that a message was not sent to the Commons: the complaint really was, that it was dismissed, and the question was, Whether they should renew it? Thus it rested, and, with many instances intervening, it came down to the year 1673, when the question came on, Whether an Impeachment abated by Prorogation?—His Lordship explained at great length, and with much accuracy and precision, the original sense of prorogation and adjournment. He also took notice of the strict analogy and the perfect conformity between continuances in Law and Parliament. It had been stated, his Lordship observed, in the course of the debate, that there was a difference between Parliament acting in a legislative and a judicial capacity. His Lordship stated, agreeably to the account given by Lord Coke, that originally both Houses of Parliament met in one House, when, of course, there was no difference whatever between the legislative capacity and the judicial capacity, except those distinctions which they themselves had laid down. He did not mean to deny the existence of things which appeared in books. He had omitted, his Lordship said, a great many instances of Precedents which he might have mentioned. He should, his Lordship observed, be very glad to have the Impeachment dismissed without any more trouble, provided it could be done with credit and propriety. With regard to the House, it might be extremely proper for their Lordships, acting legislatively, to consider the future; but this mode of reasoning would be very fallacious, if they were to apply it in argument upon what was past, and in acting upon the law that was past. It had been said, his Lordship observed, that it would be extremely ridiculous to grant the Commons an inquisitorial power, and the Lords a judicial power, when they could not carry it into effect. This was not good reasoning; for all power that was possessed was subject to abuse in the exercise of it, and the only remedy for such abuse was punishment. It had also been said, his Lordship continued, that Parliament was a permanent court. His Lordship contended that it was not more so than a court of *Oyer and Terminer*. The Commons were never considered by that House as a body acting in their Parliamentary capacity, but when they were in the House of Commons. The House of Com-

mons were the virtual Representatives of the People, and ought to be considered as their strength and glory. The House of Commons, his Lordship said, virtually represented the Commons of England, although not actually; but whether they represented them in one way or in another, their whole authority rested in the House of Commons, and was united to that alone. The Impeachment, it was true, was in the name of all the Commons of England, which were a permanent, durable body, and therefore it had been said, that as long as the people existed, the Impeachment could not possibly abate. This reasoning was not more conclusive than in the other cases. Suppose, said his Lordship, a grant were made and the Bill did not pass, would any one contend that the grant stood good for another year? The question was one which, his Lordship said, considering the turn the debate had taken, he wished to have decided that night, if it could be decided consistently with the dignity of the House; and if it were determined that night, he should have the pleasure of not spending such another fatiguing evening as that had been.

Lord Loughborough followed the Lord Chancellor, but on the opposite side of the question. His Lordship began with observing, that he should be obliged to go much deeper into the question than he should have done had the mode of proceeding been different. He followed the Lord Chancellor through all his arguments, combating them one after another, and contending, upon what he termed indisputable authorities, that what he asserted was clearly and incontrovertibly the doctrine of the Law of Parliament, as founded in reason, supported by usage, and uniformly acted upon, as undeniable precedents proved. He entered at large into the History of Writs of Error, and reasoned from it to shew that they continued and were not abated by either Prorogation or Dissolution. He maintained, that the only difference between Prorogation and Adjournment was, that the latter was the act of either House of Parliament, and the former the act of the Crown, both of them operating to the same effect, viz to adjourn Parliament. In reply to the Lord Chancellor's doctrine, that abstractedly, and in the true sense of the word, *prorogation* meant the power of adjourning the day of meeting before a Parliament or Session of Parliament had assembled, and not any subsequent adjournment of the House, as it was now practised, Lord Loughborough said, that without referring to the abstract sense of the word *prorogation*, the usual application of it was the point that could alone be worth consideration. With-

out, therefore, calling upon the learning that had been displayed in the definition of the word by the Noble and Learned Lord on the woolsack, it was sufficient for his argument that he talked of the light, and annexed to it the meaning in which nine persons out of ten would say they saw and understood it. His Lordship also controverted the Lord Chancellor's doctrine, that the House of Commons did not impeach in the name of *all the people of England*, and asserted that they did emphatically prosecute *in the name and on the behalf of all the people of England*. The Noble and Learned Lord, he observed, had said, that the House of Commons did not really, but only *virtually* represent the people of England; but the fact, he contended, was, that they were sent to Parliament as Representatives of the whole people, by those qualified to choose Representatives, and the clearest proof of this that could be adduced was (and a stronger need not be sought after than that which the Noble and Learned Lord had himself stated, viz.), the power of the Commons to grant supplies. What was it, he asked, conveyed the money into the public coffers out of the pockets of the people of all rank and description individually? The vote of the House of Commons, who were constitutionally vested with the functions and powers of voting the money of *all the people*, to apply the money so voted to the promotion of the general interest of the whole. But the Noble and Learned Lord had said, that the House of Commons voted the money of their Lordships as well as the money of the Commons of England. It was true they did so; but when? Not before their Lordships, in their Parliamentary capacity, had personally signified their consent to such votes! It was therefore most indisputable, that the House of Commons represented all the people of England, and voted and prosecuted in their name and behalf. Their Lordships voted for themselves, and had the single advantage of being the judges before whom popular prosecutions of the first and highest order, viz. Impeachments, were brought to trial by the House of Commons, who on those occasions were the accusers. In settling the Constitution, every thing that was single and indivisible was wisely lodged with their Lordships; every thing that was divisible was given equally to the two Houses, after the separation of the Parliament, and the discontinuance of the ancient custom of the Parliament (both Lords and Commons) sitting in one chamber and under one roof. Hence every thing that was judicial was vested in that House; and every thing of a legislative nature divided equally between the

two: and this it was that gave the true poise and character to our Constitution; a Monarchy, something of an Aristocracy, and a sober and temperate Democracy constituting its frame. Let not their Lordships, therefore, act incautiously with regard to the popular part of the Constitution! Let them look about them and be warned! Let them not deny that the people *were any thing*, lest they compelled them to think *they were every thing*. Having said this very emphatically, his Lordship observed, that the *formal* cause of their Parliamentary Powers had been confounded with the *efficient* cause. The writ of summons, he said, was merely the *formal* cause of their being assembled as a Parliament; but that their *efficient* Parliamentary privileges and functions derived themselves from the Constitution itself, and were uniformly the same: and this was so obvious, that he was rather astonished that it should have been at all mistaken. Having cleared up this, Lord Loughborough went into a detail of the cases to be found in the volume on the table, and in the pamphlets which had been written on the subject, many of which, he said, were extremely ingenious, and highly useful to any individual who wished to make himself master of the subject. He declared it had fallen in his way to have read most of them, and he held himself much obliged to the respective writers for the very essential assistance they had afforded him. He went through the particulars of the Impeachment of the five Popish Lords, that of Lord Dinby, that of the Earl of Stafford, that of Lord Salisbury, and others, down to that of Lord Oxford, on which he only said a few words, observing, that as it had been already sufficiently discussed in the course of the debate, he would not at so late an hour trespass farther on the time of the House. He mentioned the character of Lord Nottingham in terms of the highest panegyric, and said, that it was a singular circumstance, that in times when men's fame was liable to be destroyed by the gifts of calumny, and to be wounded by the shafts of detraction was so common, that few who acted at all in public life, and mixed in the politics of the day, escaped unhurt, Lord Nottingham should have passed through that difficult period, filling great offices, and standing in an elevated station, without having his character once tainted by the breath of defamation, his integrity once questioned, or his knowledge, his judgement, or his firmness and steady perseverance in rectitude, disputed. His Lordship laid great stress on Lord Nottingham's famous speech to the New Parliament after one of the dissolutions, supposed to have had their origin in order to
defeat

defeat the then depending Impeachment. By that speech, in which Lord Nottingham (then Chancellor) earnestly exhorted the Lords to pay due attention to the preceding Impeachments, it was evident what Lord Nottingham's opinion on the subject of continuance of Impeachments was. His Lordship also mentioned the circumstance in Lord Danby's case, of the King's taking the Great Seal and affixing it to the pardon of the Lord High Treasurer himself, and subscribing it with his own hand; on which account the House of Commons then in existence had refused, most virtuously and constitutionally, to suffer the pardon to be pleaded in bar of the Impeachment. The whole tenor of his Lordship's argument, in all its parts, went to prove, that a continuance of Prosecutions by Impeachment had been recognized in theory, and acted upon practically in far the greater variety of instances that had occurred in prosecutions of that sort. In the course of his speech he again and again shewed that if the case were otherwise, and the Crown could, by a Dissolution, put an end to an Impeachment, that mode of prosecution, deservedly admired as it was by foreign writers, and described by Montesquieu as the most beautiful feature of our Constitution, would become a means of escape to the guilty, and a cruel weapon of injustice to the innocent. It would then be an impossibility to get at a bad Minister, let his misdemeanors and crimes be ever so enormous; our much boasted Constitution would lose one of its best securities, and ministerial responsibility would become merely nominal. In the course of his speech he pointed out the fallacies of Sir George Jeffries, and other Court sycophants, in a reign of servility and courtly complaisance, and rested his argument for his constitutional doctrines on the authorities of Chief Justice Hale, Lord Clarendon, Judge Holt, and above all, Mr. Justice Foster, who was, he said, the best constitutional Lawyer that ever wrote on the subject, and from whose works he would, with the leave of the House, read a passage on Impeachments perfectly in point. His Lordship then read an extract, which spoke of the process of Impeachment as an instance "of the constant activity of the Constitution," which lent a spirit and a vigour to the whole, far superior to any thing to be found in the Constitutions of other countries. After insisting upon this circumstance, and the essential advantage of Impeachments, in a constitutional point of view, his Lordship finished a most eloquent and able speech, the delivery of which kept him on his legs for nearly two hours

and a half, with declaring that he should give his vote for the question moved by the Noble Baron, feeling himself ripe to proceed without farther delay.

Lord Kenyon came forward and began a short speech with declaring, that he had not intended to have said a word upon the subject that day, as he really had not imagined that the debate could have taken place so soon, being led to expect, from all that he had heard upon enquiry, that the sole business of that day would have been to refer the Report of the Committee on the table (accompanied by some questions in his mind essential to the only proper means of fully discussing the subject) to the Committee of Privileges, and that there would have been at least an interval of eight and forty hours previous to the principal discussion taking place. Finding, however, that the debate had unexpectedly taken a different turn, and supposing that it was expected, from the station he held, that he should deliver his sentiments, he rose so to do; but he would neither deal in extravagant encomiums on Impeachments, nor in invectives against them. He thought it right to declare in the onset, that the volume of Precedents on the table had unfortunately come out so late, that by the time it was delivered, he was engaged in the discharge of his official duty, and in consequence had not been able to read a single page of the Report. Having acknowledged this, his Lordship said, he was aware that it might be said to him, "If you profess yourself ignorant of these Precedents, why do you presume to give your opinion on the subject? In answer he should say, that he had formed his opinion on other grounds which fell within his reach, and which rendered him fully competent to make up his mind to the matter. Having premised this, his Lordship solemnly exhorted their Lordships to consider, that they had not the single case of an individual before them; the rule they laid down that evening would affect their own fames and fortunes, lives and properties, whenever they or their descendants might happen to be tried for treasons, in common as they would proportionably affect those of every other description of his Majesty's subjects when tried for misdemeanours only; they ought therefore to be sure that they did not lay down a rule which, however it might at first sight appear to be prudent and proper, might be liable, when brought into general operation, to prove pregnant with inconvenience, mischief, and danger. Their Lordships ought to act in a case of that kind as if they were aware that they were about to dip their hands in the

the blood of their fellow-subjects. The whole of the question, Lord Kenyon said, appeared to him to lie between the two Resolutions, that of 1678 and that of 1685, upon which his Lordship descanted at some length. One of them, he said, had, as it was well known, been made on the spur of an occasion, which was a bad feature in any rule that was meant to apply generally in future; and what was still worse, that Resolution was meant, as it afterwards turned out to be calculated, to countenance the assassination of an individual under colour of law. Whatever, while their passions were warm and their prejudices strong, men might think of the conviction and sentence of the unfortunate Viscount Stafford, he believed there was no man now, when reason had resumed her seat, and sober reflection had succeeded to the violence of party feeling, but was ready to agree with him in proposing the execution of Lord Stafford a *legal murder*. After commenting upon this fact, his Lordship stated, that there were three distinct considerations which ought to weigh with their Lordships in deciding upon every question of criminal justice, as well the superior mode of proceeding by Impeachment, as the inferior processes in the lower Courts, viz. that they were not only to view the constitutional right of the Commons to impeach, and their own functions in the character of Judges upon all trials of Impeachment; but that there was a third part, the party accused, who ought ever to be considered as entitled to their justice and their protection, and to be regarded with humanity. His Lordship confessed himself at a loss to comprehend what a Noble and Learned Lord meant by denying that the writ of summons was the source of their authority and power as Members of a House of Parliament acting in a judicial capacity. In his own case, he well knew that his Majesty's writ, constituting him to fill that situation which he unworthily held, gave him the right to judge all those cases that were brought before him. It did not certainly specify what those cases were to be; but it gave him that authority, without which he could not have taken his seat on the Bench of Judgment. In like manner he could not have come into that House to act as one of Mr. Hastings's Judges, had not his Majesty's writ of summons called him there. It was undoubtedly true, Lord Kenyon said, that Mr. Justice Foster was, as a Noble and Learned Lord had termed him, a great legal authority; but Mr. Justice Foster in one part of his writings supported the abatement of

a Dissolution; and sure he was, Mr. Justice Foster would not have countenanced so dangerous an idea, as suffering it to be intimated that they were to consider the Law *as it ought to be*, and not the Law *as it was*. The latter, and no other, ought to be their rule of conduct. He said, if dry legal reasoning and a strict attention to forms of practice (on which substantial justice depended) were unpleasant to their Lordships, they had better not call on Lawyers for their opinions, but either send them out of the House, or not suffer them to babble there. His Lordship spoke of Chief Justice Hale in terms of strong praise, declaring that it was an undoubted fact, that Chief Justice Hale would never sit on a criminal cause, because he doubted the authority of Cromwell to try any such causes. His Lordship said, he was in great hopes that what had been laid down with so much weight by the Noble and Learned Lord on the woolpack would have been adopted, and that they would have referred the matter to a Committee of Privileges. Such a line of conduct would, he thought, have lent solemnity, a grace, and a dignity to their proceedings, which he could not but feel that a consideration of so much magnitude absolutely required.

The Earl of Guildford, after apologizing for rising at so late an hour, which he ascribed to his wish to hear the arguments of the first legal authorities in that House before he delivered his own opinion, and declaring that he had listened to what had been said with the greatest attention, observed, he was astonished that any Noble Lord should call for further delay. He, for one, was ripe to decide the main question then; and even had he been in doubt, and undetermined before, what he had heard that night would have settled his doubts, and convinced him, that, considering the Law *as it was*, and not *as it ought to be*, as then Lordships had been desired to do, the Law undoubtedly was, that an Impeachment did not abate by a Dissolution. He reminded their Lordships that the question had been before the House three months; if, therefore, as the Noble and Learned Lord who was worthily placed in the first office of Criminal Law, had told them that delay would give grace and dignity to the prosecution, it had already had that grace and dignity. Any farther delay must, he should conceive, be an useless procrastination. The Noble and Learned Lord had talked of humanity; the question, as he understood, was a question of Law, and the principle of our Law was always humane; any other humanity, therefore, would be foreign to the consideration, when they

were

were to consider the law *as it was*. His Lordship said, it might be equally conducive to the ends of justice and of humanity, that a person accused by an Impeachment should have as early an opportunity afforded him as the nature of the case would admit, of making his defence and clearing himself, if possible, from the load of obloquy and aggravation of guilt that might have been heaped upon him pending an Impeachment. If therefore an Impeachment abated by a Dissolution of Parliament, an innocent man (for so every man ought to be considered till he was proved to be otherwise) would be deprived of the only means of proving his innocence, and be thus stamped with infamy, which he would never wipe away during the remainder of his life. His Lordship laid great stress on this, and on the power that a bad Minister would have to screen himself, and persecute his political foes, if the doctrine were to obtain, that an Impeachment abated on a Dissolution of Parliament. Should that doctrine ever be revived, his Lordship said, Impeachments would no longer be looked on to as the first grand medium of criminal prosecution for delinquents whose crimes came not within the reach of the ordinary course of justice, but they would be converted into instruments of tyranny, under colour of law, to screen the guilty, while they could not be of any service to the innocent. He denied that the Writ of Summons gave Members of that House their functions. The writ indeed summoned them to meet at Westminster, but they possessed the right of being Judges, as their ancestors had done before them, as a matter of indisputable hereditary right. It had been said, his Lordship observed, that there were no longer the same accusers. Those who argued thus, forgot that the majority of the new House of Commons was the same as had sat in the former House, and when they came into Westminster-hall, they would probably find the same individual accusers managing the Impeachment. His Lordship in a general way touched on the cases of Lord Danby, Lord Salisbury, Lord Peterborough, and the Earl of Oxford, and, after an able speech in support of the original question, concluded with returning thanks to their Lordships for their indulgence.

Lord King said, he was amazed that the Noble Earl who had just sat down, should have ventured to have taken any part in the debate. The Noble Earl had himself been an accuser, and it was, in his mind, highly indecent for any Noble Lord to circumspect, to interfere with the order of proceeding, the instant they became one of the Judges.

Lord King said, his opinion that day was, that they should not suddenly be sent into Westminster-hall without having a. all considered the precedents on the table, because he saw no use in having appointed a Committee to make so voluminous a Report, if they were to pass it by and take no notice of it, before they decided on the general question.

Lord Guildford in a most able reply repelled the attack of Lord King, and asked if there was any thing indecent in his having exercised his right as a Peer, to deliver his opinion on a great constitutional question, because he had been a Member of the House of Commons when the Impeachment had been voted. He certainly concurred in that Impeachment, though he had never concerned himself in the management or progress of it since. The question of that right was not the little case of Mr. Hastings, but a great constitutional question, Whether Impeachments did or did not abate on a dissolution of Parliament? If the Noble Lord thought no Peer who had not sat in that House above three years, had a right to deliver his sentiments, or to exercise the functions common to them all, viz. that of sitting as Judges on every Impeachment that came before them, sure he was, the Court, when they were called on by their duty to go into Westminster-Hall, would be thinned of its Judges more than the Noble Lord perhaps might wish. But if it was indecent in him to deliver his opinion on a question that affected, not only their rights and functions as Peers of Parliament, but one of the most essential points of the Constitution (involving in it no less than the responsibility of Ministers), he presumed it could not be more indecent in him to deliver his sentiments, than it had been in the Noble Secretary of State, who, so much to his own honour and their Lordships' advantage, had distinguished himself so eminently at the head of the board that framed and drew up that voluminous Report on the table, or in the Noble and Learned Lord so worthily set at the head of the criminal justice of the kingdom. Not that he meant to cast the least censure upon either of them; he knew their conduct had been commendable; he would not say that his own conduct had been commendable, but at least he trusted, that he had not been guilty of an impropriety, much less of any indecency in his conduct that day.

His Lordship was loudly cheered with the cry of hear! hear!

Lord Grenville rose, and began a most able speech with following Lord North, whom he termed his Noble Friend, in defending himself from the imputation of having

having acted either improperly or indecently, in taking an active part in the business then before them. His Lordship said, if the Noble Earl who spoke last deserved censure for having delivered his opinion, how much more must he merit condemnation, for having presumed to give his sentiments to the House, since he made no scruple to confess that he had stood forward in the other House of Parliament as an advocate for the Impeachment, and by speaking and voting, done every thing in his power to promote it, because he thought there was matter of charge enough in the Articles to make an Impeachment necessary for the national honour, and for the ends of national justice. When acting as an accuser, he had done his duty, and no more; but called upon as he then was, by a change of situation, to act as a judge, he trusted he should do his duty likewise, and God forbid that he should be in the least influenced by his past conduct as an accuser! The motion then before their Lordships, Lord Grenville said, had no relation to Mr. Hastings, and those who viewed it in that light, did not properly consider its importances, which were of infinitely greater magnitude than a question relative to an individual. With regard to any objection that might be taken to him on account of his lately having had the honour of a seat in that House, or to any other Noble Lord on that account, the argument had no weight whatever in his mind, nor ought to have any on the minds of their Lordships, because it was a circumstance incidental to all Impeachments, whether they continued only one Session of Parliament, or ten Sessions. Besides, the arguments on that head would extend infinitely further than the Noble Lord who had stated it seemed to be aware of. It would serve equally as an argument on the appointment of every new-made Bishop, or the election of a new Peer of Scotland, much more such a change as the General Election usually occasioned. In short, Lord Grenville said, there would be no end to such an objection; it was of a sort that could not be made applicable in any case where the trial of an Impeachment took more than a single day. Having put this argument in a most perspicuous and strong point of view, his Lordship proceeded to argue the main question, and began that part of his speech with declaring, that what he had hinted at as his opinion when he last troubled their Lordships had been fully confirmed by what he had heard in the course of the debate; in which the question, he was convinced, had been as fully debated, and as ably discussed, as it would have been, had the Report been referred to a Committee of Privileges. His

Lordship proceeded to state his argument in detail, promising their Lordships to press his reasons into as small a compass as he possibly could. So amply however had his Lordship considered the subject, and so ably prepared was he to reason it in every point of view, that he was nearly two hours in delivering his sentiments, which he did with such mastery of the theme, as much logical acuteness, and as great a degree of solid argument, as we ever heard. His Lordship spent a principal part of his speech in considering and examining the two Resolutions, that of 1678 and that of 1685, which (to use his own phrase) he traced to all their bearings on the question before the House. He also spoke of the different cases that had been alluded to by different Lords, and answered many points of the Lord Chancellor's speech, particularly holding up to their Lordships, what would be the situation of a party accused by the Commons, if the Crown for its own purposes, or the Minister from political views of his own, had it in either of their powers, by the manoeuvre of a dissolution of Parliament, to put a stop to a Trial on Articles of Impeachment, either before the prisoner had made his defence, or before judgment was pronounced, or in any way so as to leave the proceeding unfinished. He presented the reverse of the picture also, and shewed most unanswerably, that the existence of the Constitution itself would be at the mercy of a Minister, if such a power was suffered to exist in any free country.

Lord King rose again, and said, notwithstanding the shout of hear! hear! he had not thought it necessary to rise, when the Noble Earl near him sat down after his reply: but he had not meant any personal offence to the Noble Earl, or to his Noble Friend; he thought those, who had so lately been accusers, ought not so early to take an active part as judges. If either of the Noble Lords chose to walk into Westminster-Hall as a Judge, he had not the slightest objection; but he did not wish to be forced to go there himself rashly, and with the voluminous Report on the table wholly unconsumed.

Lord Lansdowne rose as soon as Lord King sat down, and said, that when he had taken the liberty of recommending it to their Lordships to go into a Committee of Privileges, he had among other reasons done so, in order to prevent what he was afraid would happen, and which actually had taken place, viz. that if the debate upon the motion went on, it would continue to so late an hour, that Noble Lords would be rendered unable to state their opinions fully. That was, his Lordship said, precisely the fatigue with himself; the late hour and the fatigue

their

their Lordships had undergone having made it impossible for him to attempt to deliver his sentiments at any length. Having premised this, his Lordship said, he must utterly deny the principles that had been laid down in the course of the debate as the leading principles of the law of Parliament; so far from it, the Marquis said, the uniform practice of Parliament went directly in the teeth of such supposed principles. Their Lordships, he contended, had no right to go in search of extraneous ground of argument, and to reason upon fanciful deductions of analogy, but were bound to be governed by precedent, where precedent was conformable to law and reason, and not on the spur of the occasion to make a new case. He stated the difficulties legal considerations involved every man in, who had no professional knowledge, and stated the absurdity of the law in the cases of wills—landed property descending, and personal property ascending. He mentioned other absurdities of law, to warn them from wandering out of the case, declaring that they were confined to the simple and single consideration of the law as it stood. It was not to be considered as the case of an individual, but as a general rule of law, of which they were establishing or violating a precedent, and therefore (said he) perdition thousand Mr. Hastings's, rather than one atom of the law, as it stands, should be disturbed! It had well been said, the Marquis observed, by a Noble and Learned Lord, at the head of the criminal justice of the kingdom, that the whole question lay between the Resolution of 1678 and the Resolution of 1685. His Lordship argued upon these two Resolutions, contending, that as the Resolution of 1685 annulled that of 1678, the Resolution of 1685 was clearly to be taken as the rule of procedure, and was applicable to the present case. In order to make out this, the Marquis went into the history of the two periods, and said, he had been highly pleased on hearing the encomium passed by a Noble and Learned Lord on that great character by Lord Nottingham, than whom a man of more strict integrity, profound knowledge of law, and strong sense, never held the high office of Chancellor of England. It was, he said, on Lord Nottingham that he rested his opinion entirely, an opinion fully confirmed by what he had heard since he came into the House. He meant that Lord Nottingham should speak for himself, for, he declared, he held him in his hand, and when their Lordships had heard him, he should be surprised if they were not as fully convinced as he was. Before he read a syllable of Lord Nottingham's own writing, he held himself bound to state how the work fell into his hands. He

begged their Lordships therefore to know, that he was a great collector, a much greater indeed than he was a reader; that he had purchased many manuscripts of Mr. Carr and Mr. West, names well known, and among others, the manuscript he held in his hand was one. His Lordship then read a testimonial of the authenticity of the manuscript, which was signed by the transcriber, who declared that the copy he wrote it from was lent him by Arthur Onslow, Esq. (Speaker of the House of Commons at the time that the testimonial was dated), who assured him, that he (A. O. Esq.) had the MS. from a person of character (naming him); and that person asserted it to be a correct copy of a genuine letter of the late Lord Nottingham, on the subject of Lord Danby's Case, written in the year 1683, and in 1684, the Marquis said, Lord Nottingham died. Exclusive of this testimonial, his Lordship said, the MS. bore internal proof of its having been the work of Lord Nottingham. Having premised this, the Marquis read a passage of the MS. referring to the Resolution of 1678, and declaring that it must be revised and corrected, for that in the first place it was a mistake to suppose that an Impeachment went on from Parliament to Parliament; it could not be, &c. His Lordship in fact contradicted what had been the prevailing opinion of those times. Having with great propriety and force of emphasis read the whole passage, his Lordship commented upon the application of it, observing ultimately, that as it was so much stronger than any arguments he could adduce at that late hour of the night, he would trespass on their Lordships' time no farther, but would content himself with opposing the main motion, although he could not help observing, that a certain description of Noble Lords had been convened on purpose to carry the question.

Lord Loughborough rose again and said, he had it in command from a Noble Earl, at present Lord President of the Council, to do that for him, which the late hour and extreme fatigue would not permit him to do for himself, viz. to state that the Noble Earl's opinion coincided with his own, and that he had left with him an opinion of Selden, that the new Parliament, in the Impeachment of the Duke of Buckingham, did hold, that they might, if they had chosen it, have called upon their Lordships for judgment against the Duke; a clear proof that they did not think the Impeachment was at an end. Lord Loughborough said, he had another high authority to quote, viz. that of a Learned and Venerable Earl, who had authorised him to say, that if the present question was carried, it would be strictly conformable to the Law of Parliament, and consistent with prece-

dents. With regard to what the Noble Marquis had read as a MS. of Lord Nottingham, "they," his Lordship said, "were in possession of the best proof of Lord Nottingham's opinion, viz. their own journals, which contained the Noble and Learned Earl's speech—a speech which Lord Nottingham did not contradict, when he afterwards sat as Lord High Steward on the trial of the Earl of Stafford. There might also," his Lordship said, "be some reasonable degree of doubt entertained as to the authenticity of the MS. read by the Noble Marquis."

The Marquis of Lansdowne rose again and said, he would not have presumed to have produced the MS. had he entertained the smallest doubt of the authenticity of the letter of Lord Nottingham which he had read a part of, but that he had no doubt whatever on the subject. If however, upon enquiry, it should not prove authentic, the Marquis declared he would be the first to state that it was spurious. With regard to the degree of credit due to its declarations, he could not but think a letter written in a man's closet the year before he died, deserved more credit than any public address of a public man; and the more especially, as in 1685 the very circumstance that Lord Nottingham in his letter predicted, happened, viz. the revision of the Resolution of 1678, and a new Resolution entered into to annul it. The Marquis said, he had understood that lawyers did hold themselves warranted professionally to strain their sincerity a little, and assume an appearance of belief in favour of their clients, which they did not really feel. The Noble and Learned Lord best knew whether the fact was so or not, as he understood the professional track lawyers pursued better than he could be supposed to do, but he would not presume to say that they did act in that way; it was not for him to put such a matter to the question.

The Bishop of Salisbury said, it was not his intention to have risen that day to say a word to the question, had not the Noble Marquis in his last speech apparently addressed himself across the House to the Bench on which he and his Reverend Brethren sat, and declared, "That he saw a certain set of Lords were convened for the purpose of carrying the question." If by that declaration the Noble Marquis meant to cast any such imputation on him, the Bishop declared, he could not sit easy or silent under it, because he was conscious that he had not been convened for any given purpose, nor would he

ever come down to answer any man's purpose. He came down that day to vote according to his conscience; he had listened with attention to all that had been said upon what he considered as a great constitutional question, and came down with a mind perfectly open to conviction; but notwithstanding what had fallen with so much weight and authority from the Noble Lord on the Woolpack, and from the other Noble and Learned Lord near him (Lord Kenyon), he must say that he was confirmed in thinking, with other Noble Lords, that the Trial must continue.

Lord Lansdowne rose again, and professed he meant nothing personal to the Rev. Prelate, or any on that Bench in particular; but when he talked of "Lords being convened to carry the question," he took in the Bench of Bishops, together with many other Noble Lords. The Marquis went on in a tone of taunting irony to say, that he was sure the Rev. Prelate could have no bias, no prejudice in favour of Ministry; that he did not set his mind on the things of this world; the Noble Prelate looked for a better, not to any thing like temporalities, translations, or preferments. Indeed, he had formerly had personal occasion to know how little inclined the Rev. Prelate was to better his situation, or how little anxious he was to push his merit for preferment.

The Bishop of Salisbury rose again, and after wiving the indelicacy (the Bishop said he had almost used a more strong expression) of such an attack as the Noble Marquis had thought proper to make on him, without any provocation on his part, said, however his situation had been changed by translation for his greater ease, he had to thank a benignant Sovereign for his goodness, not at the requisition, but in opposition to the known wishes of the Noble Marquis. Born a younger brother, the Bishop said, he had no right to have expected the good fortune that had attended him; and the more especially as he had no pretensions to superior learning or superior talents. He was contented where he was, and thankful to a kind Providence, and a gracious King*, for what he had; for no part of which, however, did he stand in the smallest degree indebted to the Noble Marquis. With regard to the Minister, he was not personally acquainted with him; he had never asked any favour of him, nor should he ever ask any; but he could not help admiring his character and conduct, and while he continued to distinguish himself so

* In the month of June following, the noble speaker (Dr. Barrington) was translated by the same gracious Master to the lucrative See of Durham, worth 12,000*l.* a year, then vacant by the demise of Dr. Thomas Thurlow, brother to the Lord Chancellor.

eminently as he had done, by his private virtues and his public services, he certainly would give him his support, which he had as much a right to do as the Noble Marquis had to act otherwise, standing, as he did, in that House, an independent Lord of Parliament. His Lordship said, called upon personally in so extraordinary a manner as he had been, he was obliged to say what their Lordships had heard from him; otherwise he should have been ashamed to have said a single word about himself; but he repeated it, that his only object had been conscientiously to give his opinion and his vote on what he could not consider otherwise than a great constitutional question.

The Marquis of Lansdowne rose again, and begged not to be understood as having in any sort attempted to diminish the respect due to his Sovereign, to whom he owed too much to suffer it for a moment even to be imagined, that his Majesty ever did anything contrary to the advice of his Ministers. Sure he was, that his Majesty never acted so unconstitutionally. With regard to any improper warmth that he might have betrayed, the Rev. Prelate had attacked him personally, and that naturally begot a reply; and although he meant no offence to that

Right Rev. Prelate, he owed it to truth to declare, that the Rev. Prelate was indebted to him for a part of his present preferment, and that he never had been asked for a favour with more importunity in the whole course of his life.

At length the question was called for, when the Lord Chancellor, after settling with Lord Radnor as to the form of his amendment relative to referring a question to the Judges, on the validity and existence of the Recognizances, put the question that the amendment stand part of the motion.

Contents	—	20
Not Contents	—	70
		—
Majority		50

The Lord Chancellor then put the previous question on the main question, when the numbers were,

Contents	—	18
Not Contents	—	66
		—
Majority		48

It was next moved, "That Monday next be the first day of going into Westminster-Hall."—Ordered.

Adjourned at half past three in the morning.

THE T R I A L OF WARREN HASTINGS, Esq. &c. P A R T IV.

SIXTY-NINTH DAY.

MONDAY, May 23, 1791.

THE Lords being come into Westminster-Hall, the Court opened, and Mr. Hastings was called in in the usual form.

The Hon. St. Andrew St. John, on the part of the Managers, then opened the **FOURTH ARTICLE** of the printed **CHARGES**. The other Articles, he said, had been opened to their Lordships with abilities and eloquence proportioned to the magnitude of the crimes: that which he was now to open, their Lordships would not conceive to be of less importance, because the talk had devolved on talents so very much inferior. He was to impeach the prodigal and corrupt system which Mr. Hastings had introduced into the finances of India, and their Lordships would not think it of small moment, when they adverted to the impession of such a system on the finances, the morals, and the liberty of Great Britain. Weak and inefficient would be all the checks of the constitution against the abuse of power and the mismanagement of public money, if a Governor-General of India might erect prodigality and corruption into a system, for the sake of his own personal influence. Public security was founded on public virtue, on morals, and the love of liberty inherent in the breasts of Englishmen. A system which tended to set public virtue to sale, to pluck up morals by the roots, and to extinguish the flame of liberty in the bosoms of men, could not be suffered to escape punishment without imminent peril to the public weal.

The Article charged Mr. Hastings with having made corrupt contracts, appointed corrupt agencies, and given illegal allowances, with commission almost unlimited. On such a charge, their Lord-

ships would first enquire, Whether Mr. Hastings was left to act by his own discretion on these heads, or bound to obey the orders of the Court of Directors? By the Act of 1773, which was meant to establish a general system of subordination and controul in India, the Governor General and Council were invested with a certain authority over the other Presidencies, and the same Act bound them to obey the orders of the Court of Directors. Pursuant to this Act, the Directors drew up a code of instructions for the conduct of the Governor General and Council, which they submitted to the opinion of Messrs. Dunning, Wallace, Skinner, and Sayer, to be assured that they were strictly conformable to the Act, before they transmitted them to India. The thirty-sixth article of this code directed, that all contracts should be publicly advertised, sealed proposals for the same received, and the lowest offer, with security for the due performance, accepted. The first contract which he charged as corrupt was given to Mr. Stephen Sullivan, against every rule prescribed by the Court of Directors. The purchase of opium had been first monopolized by the Gentlemen of Patna for their own benefit; the monopoly was then taken into the hands of the Company, and the contract given to a native, who had managed the business for the Gentlemen of Patna. In 1775, when General Clavering, Colonel Monson, and Mr. Francis, formed a majority of the Council, it was given to Messrs. Griffith and Wilton, as the highest bidders, according to the strict letter of the instructions from the Directors. But when, by the death of Colonel Monson, Mr. Hastings had obtained a majority in the Council, and,

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freed from that restraint which had opposed his designs, set artfully about his favourite system of influence and corruption, the contract was granted to Mr. Mackenzie, without being advertised at all, and on terms less advantageous than before. This was blamed by the Court of Directors in 1778. Mr. Hastings, in contempt of their original instructions and subsequent reproof, renewed the contract in the same manner, and on the same terms. In 1781, Mr. Stephen Lushington, the son of the Chairman of the East-India Company, arrived in India. This Gentleman, great and extraordinary as must have been the share of intuitive knowledge which he was supposed to carry out with him, could not possess much information respecting a branch of commerce peculiar to India. Yet scarcely had he set his foot on shore, when he was made an Assistant in the Council, and soon after Judge Advocate; and as if his deliberative and judicial functions had been too little for his innate stock of knowledge, he was also appointed Opium Contractor, an office which no Councillor could hold with any decency. This contract was granted without being advertised; and for four years instead of one, as it ought to have been according to the instructions of the Directors, on pretence of fear of loss to the Contractor from disturbances in Bahar—as if giving the contract to a young man without experience, had been the best means of preventing loss. But, however the public might lose, care was taken that Mr. Sullivan should not lose; for six days after Mr. Hastings proposed in Council to reduce the penalty of non-performance, for this very curious reason, “that the magnitude of the sum might defeat the intent of the stipulation.” The next step was to abolish the office of Inspector of Opium, that the intuitive skill of Mr. Sullivan might not be encumbered with an aid that was only necessary to men of experience. Mr. Sullivan lost no time in using the contract, as might have been expected. He sold it to Mr. Benn; and Mr. Benn to Mr. Young, who actually executed it, and gave for the purchase to the amount of 60,000*l*. What Mr. Young gave to an individual, he would have given to the public, had he been permitted to do so. It was evident, therefore, that the contract was given to Mr. Sullivan for the purpose of influence to Mr. Hastings, by making the fortune

of a young man so nearly connected with the Court of Directors. This was done too in a time of war, when the Treasury was distressed for money; and when Mr. Hastings was grasping his avenging sword to dethrone Cheyt Sing for dilatory payment of an unjust demand upon him, which, yet, was less than the sum lost to the Company by this corrupt contract. It appeared, however, that Mr. Young did not give the full value, for the next contract was taken at 100,000*l*. more than he gave.

The next Article of Charge was, engaging the Company in a smuggling trade to India. Mr. Hastings having given many new maxims in politics, wished also to give some in trade. He admitted that Opium was contraband in China, and then wanted to persuade the first commercial nation in the world; that all their former notions were erroneous—that fair dealing was a certain loss, and that smuggling and fraud were the only lucrative and honourable means of conducting traffic. The success, indeed, had not answered his expectations; but could any advantage have compensated the disgrace of such an adventure? The penalties of importing Opium into China were, that the Opium should be burnt, the vessel confiscated, and the importers put to death; and yet this was a trade to which Mr. Hastings thought fit to give the sanction of the British Government in India.—He was not even left to judge of the propriety. His orders were, that the Opium should be consigned to the Board of Trade, to be sold to the highest bidder, and the produce applied to the investment of the year. Instead of this, he ordered it to be consigned to the Council, and gave the management of the export to China—to whom?—to a Merchant?—No—to a Colonel of Engineers, Colonel Watson. Other persons were embarked in the scheme, and the Company engaged in two loans to aid them in carrying it on, at the very moment when Mr. Hastings was pleading State necessity for robbing the Princes of India, and compelling a son to countenance and abet the plunder of his mother. The adventure succeeded as might have been expected. The Supercargoes at Canton stated the loss on the sale at 69,000 dollars, owing, as they said, to the nature of the trade, and the interfering of private with the public interest; but on this he did not insist, because that which was in itself illegal and

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disgraceful, no misfortune could aggravate, as no success could sanction,

The orders of the Directors were also explicit, that all such business as could be performed by contract should be so performed; that all contracts should be publicly advertised, and the most reasonable terms accepted; that all contracts for provisions and draught and carriage bullocks for the army should be *annual*. These orders had been strictly observed while General Clavering, Colonel Moulton, and Mr. Francis, directed the Council. But in 1777, Mr. Hastings gave the bullock contract to Mr. Johnston for *three years* without advertising it. In 1779, Sir Eyre Coote proposed some amendments in this contract; and a new contract was made out in the name of Mr. Crofts, the confidential friend of Mr. Hastings. The new contract was made for five years certain, with a stipulation, that unless notice was given at the expiration of four years that it was to expire, it should continue for six. If Mr. Hastings meant to say for thus extending the time, that the orders of the Directors for an annual contract were calculated only for peace, ought it not to have occurred to him, that before the expiration of five years peace might be restored, and that such at least should be the limit of the contract? The estimate given in by Sir Eyre Coote, the Commander, was that 4074 bullocks would be wanted for the whole of the troops; and although it could not be expected that all the troops should take the field at once, the number in the contract was raised to 6700. The rate as well as the number was raised, so that the total difference between the contract to Mr. Johnston, and the new contract to Mr. Crofts, was 300,000*l*. The terms of this contract, however, were given out in general orders, and directed to be read at the head of the several battalions. Immediately after arrived letters from the Directors censuring the contract given to Mr. Johnston, as contrary to their instructions, and directing the 134*th* article of the instructions to be read at the head of each battalion. What was Mr. Hastings then to do? He could not order the terms of the contract to be read, without ordering another paper to be read also, shewing that he whose duty it was to exact obedience to orders, had himself disobeyed. He wrote to the Directors, that there was a mistake in their letter; that they must have meant the 135*th* article of their instructions

be read; that this article was nothing to the purpose, and therefore that he had not ordered it to be read. It was his duty to give notice of the expiration of this contract at the end of four years; but this he had neglected to do, alleging, as a reason for such neglect, that the consideration of the contract was not legally before the Council board. This could not be the true reason, for he was bound to have every part of his duty at all times before him. The true reason was, his perseverance in the same extravagant waste of the Company's money to enrich his favourites, as he afterwards shewed in 1784, when he converted the contracts into more lucrative agencies, which he was also expressly forbidden to do.

He was now come to that part of the charge, in which the character of an officer was implicated, who had performed great and important services to the Company; but whatever reluctance the Managers might feel to bring an imputation on the memory of that officer, they must not shut their eyes against one of the most corrupt and extravagant acts in the administration of Mr. Hastings. When Sir Eyre Coote arrived in Bengal, Mr. Hastings's majority in the Council depended on his own casting vote. It was therefore of great importance to his designs to obtain the favour and support of Sir Eyre Coote. The salary of a Councillor was fixed at 10,000*l.*; that of Commander in Chief at 6,000*l.*; and, accordingly, the sum of 16,000*l.* a year was all that General Clavering had ever received. Sir Eyre Coote brought with him a letter from the Court of Directors, ordering that he should receive no more; but soon made a demand of 8,000*l.* more, on pretence that some such sum had been enjoyed by General Sturber as Commander in Chief *pro tempore*, and must therefore devolve on him.—Mr. Hastings, instead of refuting this demand, as he ought to have done, or complying with it literally, proposed and carried in Council, that the sum of 15,000*l.* a year should be given to Sir Eyre Coote in addition to his former appointments, and charged this enormous addition on the Nabob of Oude, contrary to an express agreement that no more charges should be made upon him, and obliged the Nabob to pay it over and above all the former charges.

The next Article of charge was the agency given to Mr. Auriol for supplying the Presidency of Madras with provisions in a time of great scarcity. Mad
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Mr. Hastings's real motive been to relieve the wants of Madras, he would have said, in the words of the benevolent religious writers, "charity covereth a multitude of sins;" and given Mr. Hastings credit for an ardent exertion of power. But his motive originated in the same system of profligacy to make the fortune of a favourite. Mr. Aniol was appointed agent, accountable *in his honour*. What was this conversion of the comptrol-house of the India Company into courts of honour, but perverting those principles which direct the minds of men, when they have no other guides to the purposes of abuse and perdition? An agent granted in 1777 was censured by the Directors in 1778, contrary to their orders; and ten months afterwards, on the application of Mr. Aniol, Mr. Hastings proposed to make him agent for supplying Fort St. George, and all the other Presidencies, with rice and other articles; and as the intention of the appointment "was most likely to be fulfilled by a liberal consideration of it," he was to account upon his honour, with a commission of 15 per cent. When Mr. Larkin, the Accountant General, came to examine the accounts of this agency, he reported that the *addition* of the several sums was correct, but that as the agent was *upon his honour*, he did not think himself authorised to call for any vouchers of the sums charged. He accordingly passed accounts to the amount of 430,000*l.* the agency on which amounted to 34,397*l.*

Another agency was given to Mr. Bell, for supplying Fort William, and all the other Settlements, with stores. This was a new appointment, and by many thought unnecessary. It was therefore referred to a Committee of Merchants, to decide what rate of commission should be allowed. They reported *twenty per cent.* and Mr. Hastings gave *twenty*. When this extravagant allowance was objected to, he said, that he would be responsible for the honesty of the agent, and also for the excess of the commission above *twenty per cent.* if the Directors should object to the rate. The Directors did object to it; he shuffled off the responsibility, and granted a new appointment. The sum paid in this case above *twenty per cent.* was 34,000*l.* and consequently so much money lost to the Company.

He summed up the various sums corruptly taken from the Company's reve-

nue, under all these heads, to the amount of 58,338*l.*—a sum more than sufficient to pay ten years dividends on the Company's stock at that time. If their Lordships compared the amount of the bribes wrested from him, which he pretended to have taken for the Company's service, but which he never gave up till he could conceal them no longer; if they compared the amount of the sums extorted from the native Princes, on the plea of State necessity, with the sums he had thus squandered on rich individuals with a view to their influence, they would see that the grounds on which he hoped to justify his conduct were untenable; that he had aimed at impunity for one crime by committing another, and endeavoured to lessen extortion and plunder by the most lavish corruption.

He concluded a very clear and elegant speech, with expelling his confidence, that any defect of his in opening the matter of the charge would be amply compensated by the force of the evidence and the ability with which it would be commented upon.

Mr. Hastings addressed the Court:

"My Lords,

"I shall take up but a very few minutes of your time; but what I have to say, I hope will be deemed of sufficient importance to justify me in requesting that you will give me so much attention. A charge of having wasted 584,000*l.* is easily made, where no means are allowed for answering it. It is not pleasant for me, from week to week, from month to month, from year to year, to hear myself accused of crimes, many of them of the most atrocious die, and all represented in the most shocking colours, and to feel that I never shall be allowed to answer them. In my time of life—in the life of a man already approaching very near to its close, four years of which his reputation is to be traduced and branded to the world, is too much. I never expect to be allowed to come to my defence, nor to hear your Lordships' judgement on my trial. I have long been convinced of it, nor has the late Resolution of the House of Commons, which I expected to have heard announced to your Lordships here, afforded me the least glimpse of hope, that the termination of my trial is at all the nearer. My Lords, it is now four years complete since I first appeared at your Lordships' bar;

bar; nor is this all, I came to your bar with a mind free from another inquisition in another place, which commenced, if I may be allowed to date it from the impression of my mind, on the day I arrived in this capital, on my return to England after thirteen years service. On that day was announced the determination of the House of Commons, for arraigning me for the whole of my conduct; I have been now accused for six years; I now approach very near (I do not know whether my recollection fails me) to sixty years of age, and can I waste my life in sitting here from time to time arraigned, not only arraigned, but tortured with invectives of the most violent kind? I appeal to every man's feelings, whether I have not borne many things, that many even of your Lordships could not have borne, and with a patience that nothing but my own innocence could have enabled me to shew. As the House of Commons have declared their resolution, that for the sake of speedy justice (I think that was the term) they had ordered their Managers to close their proceedings on the Article which has now been opened to your Lordships, and to abandon the rest, I now see a prospect which I never saw before, but which it is in your Lordships' power alone to realize, of closing this disagreeable situation, in which I have been so long placed: and however I may be charged with the error of imprudence, I am sure I shall not be deemed guilty of disrespect to your Lordships in the request which I make; that request is, that your Lordships will be pleased to grant me that justice which every man in every country in the world, free or otherwise, has a right to; that where he is accused he may defend himself, and may have the judgement of the Court on the accusations that are brought against him. I therefore do pray your Lordships, notwithstanding the time of the year (I feel the weight of that reflection on my mind), but I pray your Lordships to consider not the unimportance of the object before you, but the magnitude of the precedent which every man in this country may bring home to his own feelings, of a criminal trial suspended over his head for ever; for in the history of the jurisprudence of

this country, I am told (and I have taken some pains to search, and as far as my search has gone, it has been verified) there never yet was an instance of a criminal trial that lasted four months except mine, nor even one month, excepting one instance, an instance drawn from a time and situation of this government, which I hope will be prevented from ever happening again. My Lords, the request I have to make to your Lordships is, that you will be pleased to continue the session of this court till the proceedings shall be closed, I shall be heard in my defence, and your Lordships shall have proceeded to judgment. My Lords, it is not an acquittal that I desire; that will rest with your Lordships, and with your own internal conviction. I desire a defence, and I desire a judgement, be that judgement what it will. My Lords, I have bowed, I have humbled myself before this Court, and I have been reproached for it. I am not ashamed to bow before an authority to which I owe submission, and for which I feel respect that excuses it as a willing oblation from me. I now again, with all humility, present myself a subject of your justice and humanity. I am not a man of apathy, nor are my powers of endurance equal to the tardy and indefinite operation of Parliamentary justice. I feel it as a very cruel lot imposed on me, to be tried by one generation, and, if I live so long, to expect judgement from another; for, my Lords, are all the Lords present before whom I originally was tried? Are not many gone to that place to which we must all go? I am told that there is a difference of more than 60 in the identity of the judges before whom I now stand. My Lords, I pray you to free me from this prosecution, by continuing this Trial till its close, and pronouncing a judgment during this session: if your Lordships can do it, I have a petition to that effect in my hand, which, if it is not irregular, I now wish to deliver to your Lordships."

Lord Kenyon, who sat as Speaker for the Lord Chancellor, said, the petition must be presented to their Lordships in the Chamber of Parliament *.

Mr.

* The Petition was as follows:

To the Right Hon. the Lords Spiritual and Temporal in Parliament assembled,
The Humble Petition of WARREN HASTINGS, Esq. late Governor-General of Bengal,
Sheweth,

That your Petitioner having long waited in anxious expectation of your Lordships determination respecting his re-appearance at your Lordships Bar, finds himself relieved

Mr. Burke said, so extraordinary a speech must not pass without some remark. 'The prisoner' at their Lordships' Bar, forgetting the situation in which he stood, was become an accuser, and charged both his accusers and his Judges with improper delay. It was not imputable to the Commons that they had not proceeded sooner on the trial in the present session. It was not imputable to their Lordships.—They had wisely

taken time to consider a great constitutional point; and the Constitution was confirmed by their decision. Had they decided otherwise, then would have happened that which the prisoner deprecated; he would have been prevented from ever coming to his defence. Did the prisoner think, when he complained of the hardships of his case, that the Commons had arraigned him for small offences; that he came to their Lordships' Bar to

from one subject of suspense, by being again brought before this High Court; and he has so great a confidence in the justice and dignity of your Lordships, as to believe, that in this renewal of a trial to long depending, your Lordships mean to render it effectual to the ends of substantial justice, by prosecuting it without delay, until it shall reach its final termination.

If such should be your Lordships purpose, your Petitioner will accept it as the greatest bounty which he can receive at the hands of your Lordships; but should his trial be adjourned over to another year, he trusts that he shall not be considered as departing from the respect which he bears to your Lordships, if he presumes to try, that he shall feel it as an aggravation of the very severe lot which it has been his misfortune to experience, and of which he is the first example in the jurisprudence of this kingdom, if in any other a precedent can be found, of a criminal trial being suspended over the head of an individual, living under a fixed law and a civilized government, during so long a period of his natural life, and so near the close of it.

That four years are completely elapsed since your Petitioner was first compelled to appear at your Lordships bar, to stand and to answer to the Charges preferred against him by the late Hon. House of Commons; but that he computes the origin of then Impeachment from a much more distant date, the first notification of an accusatory process having been made so long ago as June 1783, the process itself begun in February 1786, and continued through one prorogation and many adjournments until May 1787, when the Impeachment was carried to your Lordships bar; so that in effect, though not in form, your Petitioner has been the subject of a criminal process before two Parliaments, and through six successive years; yet his prosecutors to this time have closed their evidence upon three Articles only, namely, the first, second, and sixth, omitting many points of those articles, but selecting a very few points from the 7th and 12th, as explanatory of the 6th article.—That your Petitioner craves leave to represent, that he did, in an early stage of the last enquiry, cause it to be represented to the late Hon. House of Commons, as his earnest request, that if the said House of Commons should enter upon their Journals any vote of censure or censure against him, they would be pleased to allow your Petitioner the means of a fair and legal trial for the same; but that the object of your Petitioner in making that request was, that he might be afforded the means of vindicating his character from the foulest and most unjust aspersions; but he has to lament, that those aspersions should have been renewed and repeated from week to week, from month to month, and from year to year, without any power of reply, or prospect of time allowed him for his defence and acquittal.—That, great as his reliance is on your Lordships justice, it is yet impossible for him, judging from past experience, not to feel the apprehensions of further delay, when he recollects that the last great adjournment of the Court held by your Lordships in the preceding Parliament, was made on the 9th of June, and that in neither of the preceding years did it sit later than the 7th of July; that therefore the longest interval which he can compute for what remains of this Session of Parliament, in its ordinary course, will be insufficient to enable your Petitioner to enter upon his defence, much less to bring it to a conclusion, but that he will have to sustain the intolerable grievance of seeing another year of prosecution added to the past.

Your Petitioner therefore most humbly and earnestly prays your Lordships to take the particular and unprecedented hardships of his case into consideration, and to adopt such measures as your wisdom may devise for continuing the proceedings of your Lordships Court, so that the trial may be brought to a close, and judgment given, before another prorogation of Parliament; your Petitioner craving leave to assure your Lordships, that no unnecessary delay shall be made on his part, but that he will endeavour to take up as short a time as possible in his defence.

The above was read and ordered to lie on the table.

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present petty crimes, unworthy of the generous resentment of Parliament. The crimes with which he was charged were of a magnitude not to be overlooked without a breach of duty to their country and to humanity. The prisoner complained of virulent language used against him. He professed to have looked over the annals of Parliament, to compare the length of his own Trial with that of others. He wished he had availed himself of his Parliamentary knowledge, to see that the Commons were as little disposed to spare the sacred persons of their Lordships, when justice called upon them, as the humblest individual. He wished him to have remarked, in what terms the thunder of the Commons was hurled against Lord Macclesfield, a Nobleman in high rank, and high in office, with every thing about him that could exalt a man above his fellow men. Yet he was charged with bribes, not with cruelty. The prisoner was charged with cruelties, with honors, with murders.

The Counsel for Mr. Hastings desired the Honourable Manager to shew in what part of the articles exhibited, his client was charged with murder.

Mr. Burke said, it was not regular to stop a Manager in the middle of his speech; but to hear him out, and reply. The prisoner was charged with blood unjustly shed in consequence of his corrupt acts, with plunder and rapine, and all the excesses to which they give occasion—and he complained of virulent language. Were not the Commons to call crimes by their proper names? were they to think any terms too severe, where language could hardly find words of sufficient force. Their Lordships would not think them honest accusers, if they came to their bar, to state crimes in terms of soft and doubtful meaning. The prisoner knew that the delays of his Trial had not been owing to the Commons. He had been brought to their Lordships' Bar at his own express desire, in concurrence with the opinion of the Commons, that he ought to be so; and since that time, what day had been lost to accommodate them? Let him not complain of being hardly dealt with till he was acquitted. He was now near the time when his defence would be heard, and judgement given upon it. Never, till that period seemed to approach, had he complained of

delay. The time of the Court had often been taken up in arguing the objections of his Counsel to the evidence against him. He did not blame the Counsel or the Prisoner for that, but let him not charge the delay occasioned by the nature of his defence, on the Court or his accusers. To be longer in the custody of any Court than justice required, was undoubtedly a hardship, and well calculated to excite the compassion of the public. But what hardship of imprisonment had the prisoner borne, of what comfort had he been deprived? He never wished that he had; but let not that be lamented which had never been suffered. The Commons had abandoned part of their charges, because they thought they had proved enough for the purpose of example, and because they preferred incomplete justice to none at all. If the prisoner complained of any thing, he complained of the constitution, of the justice of his country, which those who administered it could not alter on his account. It was the prerogative of the Crown to put an end to the session of Parliament without consulting them. The Managers of the Impeachment had, perhaps, borne as great a load during its continuance as the prisoner, and had as much reason to wish for its conclusion. If their Lordships should think proper to apply to the Crown by petition, or in any other manner, to prolong the Session till the Trial was concluded, the Managers, he knew, would be ready to proceed.

Mr. Fox said, that he should only trouble their Lordships with a few words. The Honourable Manager who had just spoken, had to completely answered what the prisoner had thrown out in regard to the Commons of England, that no charge could possibly remain on the Honourable House for any delay which the Trial might have suffered. If any part of the charge made by the prisoner was either directed at, or in any manner attached on their Lordships, they heard it, and would act on it as they thought proper. Undoubtedly, if they felt that there was truth in the imputation, they would consider it as their duty to correct their error.—His complaint of virulent language was surely not made with justice, nor with propriety.—As the Honourable Manager had said, every accusation must be supported by the words suitable and proper to the crimes. They would betray their cause if they did not do this. The prisoner had said, that it was a very great hard-

ship to him that he shall be bound to sit and hear all the charges opened against him, without having it in his power to make his defence and justify himself to any one of them. This was a hardship which, undoubtedly, was severe; but it was very odd that the prisoner should complain of it. The Managers had thought it a severity, and in the outset they proposed to open the charges article by article, and that the prisoner should defend himself on each. The prisoner, however, who undoubtedly knew his own case best, objected to this method, and their Lordships agreed to the mode which he brought them to pursue and of which he now complained as a hardship. If it was a hardship, it was of his own seeking. It was surely not imputable to the Managers, for they had exerted themselves to procure a contrary course. He would make but one observation more. If the prisoner brought any charge on the Managers—or if he asserted that their conduct was improper in any part of the business—he informed their Lordships that they would not answer any such charge, or strive to justify their conduct before any tribunal on earth, but that of their constituents, the Commons of Great Britain. They alone had the right to find fault with their conduct, if they thought it wrong—to dismiss them from their trust—to appoint new Managers in their place, and to give them instructions how to conduct themselves. To the House of Commons, it was their duty to render an account—but to no other tribunal would they answer: nor would they regard any observations that might be thrown out.

Mr. Hastings said, he would have been silent, if he had imagined that from any thing he had said a conclusion could be drawn that he imputed delay to their Lordships.

Mr. Burke said, the prisoner had acquitted their Lordships. If he had any charge to make against the Managers, he knew before what tribunal to carry it. If he did not make any, their Lordships would know what to think of the imputation he had thrown out.

Sir James St. Clair Erskine then proceeded to adduce written evidence of the instructions sent out by the Court of Directors; and to examine Mr. Benn on the purchase of the opium contract of Mr. Sullivan, and the subsequent sale of it to Mr. Young.

The Court adjourned at a quarter before six; to sit again on Wednesday, and to go into the House at twelve.

SEVENTIETH DAY.

WEDNESDAY, May 25.

The Lords went into the House this day, *eighteen* in number, at half past eleven, when

Sir James Erskine St. Clair, on the part of the Managers, adduced the evidence, oral and documentary, pointing to the different heads of the *Contract* charge which was opened in the first instance by this Gentleman in the House of Commons.

Mr. Young was examined at some length on the *Opium Contracts*. He confirmed Mr. Benn's evidence, as to his having given him one hundred and forty-nine thousand *Sicca* rupees a-year, for his interest in the Contract; he said, that the transaction was a profound secret. This answer totally invalidated what had been attempted to be impressed on the public, that Mr. Hastings must have been privy to this transaction.

Mr. Sullivan was in the Hall, but not examined by the Managers.

Mr. Young, on his cross-examination, delivered himself with the utmost precision. He said, he would not have taken the contract in 1781 on the low terms that he did take it in 1785; that the Patna Council, when they had an interest in this contract, never purchased Opium so cheap by a great deal as the Company got it for; proving, by this answer, that the advantages were very generally unknown.—He was asked if the inspectors were useless in Bihar. He said, certainly they were, and were embarrassing, *without any possible good to arise from their appointment*. The abolition of these inspectors is stated, as *a crime* in Mr. Hastings. To one question, "What sum of money he gained by it?" the witness objected, as likely to expose his own private affairs; it was immediately withdrawn by the Hon. Manager; and another, "Whether he did not gain *very considerably* by it?" was answered in the affirmative.

The Managers then read the Directors' letter, disapproving this contract; and here they cloied their evidence, having established the following facts beyond dispute:

- 1st. That opium, before Mr. Hastings's time was a monopoly for the benefit of individuals.

- 2d. That Mr. Hastings made it a valuable source of revenue for the Company.

- 3d. That Messrs. Hastings, Clavering, Monson, Barwell, and Francis, gave this Contract for Opium for one year to Messrs. Griffith and Wilton, they offering better terms

terms for the Company than any other persons, though there were thirteen competitors for the Contract.

4thly. That the Governor General and Council *unanimously* gave the Contract to Messrs. Griffith and Wilton for one year longer.

5thly. That Messrs. Hastings, Clavering, Barwell, and Francis, *unanimously* gave the Contract for three years to Mr. Mackenzie.

6thly. That Messrs. Hastings, Francis, and Wheeler, *unanimously* gave the same Contract to the same Mr. Mackenzie for one year longer.

7thly. That Messrs. Hastings and Wheeler gave the Contract to Mr. Sullivan for four years.

Such are the facts. The merit is, that a considerable revenue was obtained for the Company on the best possible terms. The crime is, disobedience of orders, in which every other man was just as much implicated as Mr. Hastings; for it was an order of the Company, that all contracts should be annual, and granted to the lowest bidder. Not the slightest evidence was given to prove, that Mr. Hastings knew of this transfer of the Contract from Mr. Sullivan to Mr. Benn, or from Mr. Benn to Mr. Sullivan. It was proved also, that the profit upon Opium for the Company, during the government of Mr. Hastings, was five hundred and thirty four thousand pounds.

They then proceeded to shew that it was improper in Mr. Hastings to lend Opium, on the Company's account to China. The evidence proved, that the scheme was temporary, and that it would have turned out to very great advantage, but for an accident, which Mr. Hastings could neither foresee nor prevent, and in consequence of that accident, the Company lost sixty-nine thousand dollars by the concern. It appeared that the Board of Control have approved a plan exceedingly similar to this, and it is not improper to say, that Mr. Pitt in the House of Commons declared, that there could be nothing criminal in sending Opium to China; nor was he at all ready to say, that the scheme was not a very proper one.

The Ministers, having finished with this soporific drug, proceeded to the Bullock Contract. The wisdom of that contract has been so well proved by the melancholy consequences that have resulted from a rigid attention to the orders of the Company on this point, since the

war commenced with Tippoo Saib 1790, that we shall leave it without further remark, except this, that many minutes or opinions of Mr. Francis were read, condemning the contract, and containing one most curious assertion, that he scarcely saw a necessity for any bullocks at all, as they might be pressed when wanted, as hitherto they had been; which contained in a single sentence the best argument that can be afforded by man, in justification of a contract that rendered pressing in future unnecessary, and supplied the army with the means of moving, without which an army would be useless.

This was the dullest of all dull days: Mr. Burke appeared for half an hour, made two or three speeches in support of certain questions proposed by himself; but not convincing the Court, he went away and did not return again.

SEVENTY-FIRST DAY.

FRIDAY, May 27.

The Lords entered the Hall, twenty-one in number, about twelve o'clock, and the Managers proceeded to clothe their evidence upon the Bullock Contract; by which it appeared, from the declaration of Mr. John Ferguson, the Contractor, that the profits upon this contract were not more than 15 per cent. and that one lack of rupees was to be deducted from the sum for bad debts. This statement he gave, he said, because in private letters to England the profits of this contract had been exaggerated in a most incredible manner. Mr. Ferguson further said, that so far from 6,700 being too great a number, many beyond that number were employed during the war. Mr. Ferguson is a merchant of the most reproachful character. He offered to swear to the fidelity of his statement; and thus ended this important Bullock Contract, fully confirming that statement which has been so clearly given by Captain Broome and Major Scott, of the utility of this contract.

They next proceeded to Sir Eyre Coote's allowances, and read the Court of Directors' orders, that there should be six thousand pounds a year in lieu of salary, travelling charges, &c. The officer next in command drew at this time eleven thousand a year. Sir Eyre Coote moved, that the Board would fix his allowances for the field. This Mr. Francis opposed, as the six thousand a year was to be all his receipt, except his salary as a Councillor. Sir Eyre Coote

Coote declared, if he had so understood it, he never would have come to India to expend his private fortune.—Mr. Hastings proposed the allowances, and while in Oude they should be defrayed by the Nabob, who cheerfully and readily agreed to it.

It appeared that Sir Eyre Coote continued to receive this money to the time of his decease; and Mr. Hastings's clear account of the transaction was read to the House: that it was impossible to impute a private motive to him for what he had done; and that he was convinced Sir Eyre Coote's necessary expences consumed the whole sum, for he was always in the field; but his predecessor, General Clavering, never stirred out of Calcutta.

The next charge was Mr. Auriol's agency, which Mr. Pitt so warmly defended in the House, declaring, that whatever fortune Mr. Auriol had made, he well deserved every rupee of it; that he had most honourably executed his commissions; and that Mr. Hastings had preserved a nation from perishing by famine by Mr. Auriol's agency. Mr. Pitt also said, that by no other possible means could the business have been done so economically: these facts were fully established by the evidence of the Managers for the prosecution.

The next charge was Mr. Belli's agency for victualling Fort William, which Mr. Pitt had also very strenuously defended; and it turned out to be a very fair transaction for the Company.

Mr. Hastings's Counsel objected to some evidence as to the profit of Opium; and the Court broke up, having gone through all their case as to a waste of public money.

The tediousness of this day's business was now and then enlivened with the exceptions taken by Mr. Hastings's Counsel; and the opposition which the Managers gave to these exceptions, and sometimes relieved by the intervention of verbal witnesses.

Among the latter was Mr. Alexander Brodie, a Member of the House of Commons, who was called upon to prove the rate of commission between merchant and merchant in India. This he stated to be only *five per cent.*; but when cross-examined, he acknowledged that where there was *riqué*, it varied; and that there was always a charge of interest where money was advanced. He said, he had been ten years resident in India,

and had *forgot* many of the particulars of those transactions which Counsel asked him to elucidate. Some of his own letters, however, being produced, he then recollected various circumstances which had escaped his memory; in particular as to the good quality of the rice.

Sir James St. Clair Erskine then informed their Lordships he was happily drawing to a conclusion, having but one fact more to establish, namely, that of the loss which the Company sustained by the contracts which Mr. Hastings made contrary to the express direction of his masters. To prove this, he should call Mr. Wright, Auditor-General of India Accounts, who had made a just calculation of the whole and who would deliver in the fine up on oath.

The first question put to Mr. Wright—"What was the whole sum paid by the East-India Company to Mr. Sullivan for opium?"—was objected to by Mr. Hastings's Counsel, and a long altercation took place which lasted until after five o'clock, Sir James, Mr. Burke, Mr. Anthoner, and Mr. Adams, contending that the officer's opinion was nothing more than the amounts of the debts and credits cast up and a balance struck—while on the other hand, Mr. Law, Mr. Dallas, and Mr. Pomeroy, argued that opinion was no evidence, and that in matter of account where there were varieties of ways to ascertain a balance, the opinion of a witness was no proper testimony.

To this latter doctrine Lord Kenyon subscribed, and then their Lordships adjourned to the upper Chamber of Parliament.

SEVENTY-SECOND DAY.

MONDAY, May 30.

The Counsel for Mr. Hastings agreed to take the result of the several accounts from which the loss of the Company on the several heads of the charge was to be collected on the evidence of the Accountant General of the India Company, without giving in the accounts themselves; and Mr. Wright was called and examined accordingly.

Sir James St. Clair Erskine then said, that the Managers had closed the evidence, which it was now his duty to sum up to their Lordships. The Commons had brought forward this charge of gross mismanagement of the Company's revenue for the purposes of corruption, as well with a view to deter others

others from committing the crime, as to meet the plea of over-ruling necessity, on which the prisoner, it seemed, had rested the defence of his other illegal acts. If such necessity had ever existed, their Lordships would now see from the evidence before them, that it was the creature of his own extravagance, and that it had its source in corruption merely. They would see that patronage had been invented, and money lavished by him, first to ingratiate himself with persons of great weight and authority in the Direction, and next to attach to him a body of factious adherents in India, in order to secure the continuance of his own power, and indemnity for the abuse of it. In proof of this system, the Commons had selected only five articles. Had they been so inclined, they might have taken almost every act of his administration; but these they thought would be sufficient for the great purposes of justice, and he trusted they would appear to their Lordships and to the public to have selected such articles as were sufficient to characterize and illustrate the heads into which his system of corruption naturally branched.

On the opium contract granted to Mr. Sullivan in 1781, their Lordships had seen that the orders of the Directors for advertising all contracts, and accepting of the best terms offered, were clear and express. Their orders were specially intended to guard the interest of the Company against favour or partiality to particular persons, and such orders there could be no pretext for disobeying. For a deviation from political instructions, there might indeed be some excuse. The circumstances, it might be said, which made those orders proper, were completely changed; and to deviate from them was not only commendable, but necessary. No such excuse could be alleged for disobedience to orders of the other description, because the principles on which they were founded were invariable. Yet these orders had been disregarded by Mr. Hastings in almost every instance. They were first disobeyed in giving the Opium contract to Mr. Mackenzie without advertising it. That act was expressly condemned by the Directors; and notwithstanding that, the contract was then given to Mr. Sullivan on the same terms without being advertised, and for four years instead of one. From the Consultations in evidence their Lordships would see the extraordinary circumstances which attend-

ed that contract; they would see that the Secretary to the Council, accustomed as he must have been to the conduct of the Governor-General, was so much surprised at the informality of this transaction, that he knew not how to put it into any legal shape, and was under the necessity of applying to Mr. Hastings for instruction.---Mr. Hastings soon removed all difficulties; with a noble disdain of obstacles that retarded ordinary men, he directed, that the contractor should have an extravagant allowance, leaving the amount of that allowance to be afterwards ascertained, and abolished entirely the office of inspector, whose duty it was to attend to the quality of the opium, because a very small quantity of improper quality might discredit the whole in the market, and render it unsaleable. The Council for the prisoner thought it of importance, that an opium contractor had said, on his cross-examination, that an inspector was an inconvenience to the merchant; but their Lordships would not be much surprised, that an officer whose duty it was to take care that a contractor provided a marketable commodity, was thought an inconvenience by the contractor. This contract was sold by Mr. Sullivan to Mr. Benn, for 40,600*l.* and again by Mr. Benn to Mr. Young, for 69,136*l.* Mr. Benn on one branch, which he kept in his own hands, got 7,000*l.* so that the whole sum lost to the Company was 76,136*l.* for it was evident that the same sum would have been as readily paid to the Company, as in these purchases from hand to hand. It was sold too before Mr. Sullivan had a legal right to sell, on the mere promise of Mr. Hastings, a strong presumption of corruption. The time at which this loss was incurred was material: in 1781, when Mr. Hastings, on pretence of an empty treasury, thought it necessary to make a progress to Benares to enforce the payment of an unjust demand of 50,000*l.*; at such a time it was that Mr. Hastings thought proper to bestow a much larger sum on a friend and favourite. Whether he was privy to the sale and re-sale, was of little moment, for he must have known that Mr. Sullivan could not execute the contract. He knew that Mr. Sullivan had been appointed Judge-advocate, that he had been associated with himself in the toils of Empire, and actually attended him to Benares, situations incompatible with the execution

to his contract. But Mr. Sullivan was son to the Chairman of the Court of Directors, who were then every thing to Mr. Hastings. To them he was to look for the continuance of his power—for the gratification of his ambition and his avarice—and, last, not least, for impunity. His influence with them had been so strong as to defeat a Resolution of the House of Commons for his removal. It was melancholy to see the first officer of the Company at home, and their first officer abroad, thus combining in a system of corruption, and sharing the plunder between them.—Mr. Hastings was then dreaming of empire and spoil in Benares; and it was not much that he should give a donative of 40,000*l.* to the young Cæsar, whom he had adopted his associate, being about the same sum which he himself received through the hands of Kellaram. But it was necessary to descend from the throne to the counting-house; and his next step was, under a false allegation of a want of sale for the opium, to engage the Company in a scheme of smuggling it to China. The opium ought to have sold for 154,000*l.* and produced only 38,000*l.* The loss on this transaction was consequently 116,000*l.* But taking only the prime cost, freight, and other charges, the loss on Mr. Hastings's own shewing was 52,551*l.*; and in this point of view it was evident, that he had completely sacrificed a branch of revenue, which it was his constant boast that he had produced. His Council had gone into a useless examination, to shew what would have been the profit had all the ships arrived; but the loss of ships, or the expense of insurance, were to be taken into the account; and they were to compare what was actually received with what might have been received, had the opium been sold in Calcutta, as it ought to have been. The scheme was not devised for the benefit of the Company, but for the purpose of remitting ill-gotten wealth to Europe, which could not come through a fair channel, and accordingly it appeared, that those who divided the plunder of Bidjegur, were sharers in the loan opened for the purpose of carrying it into effect. The whole transaction was tinctured with private favour and corruption, and the loss was owing as much to the iniquity of the detail, as to that of the general plan.

The Bullock Contract was granted to Mr. Johnson in 1777, against orders, for three years. This was Mr.

Hastings's own act, for after stating the loss and inconvenience to the public from pressing Bullocks when wanted, in a minute of Council he added, that as a remedy, he joined in giving a Contract to Mr. Johnson, which secured the public from loss, and allowed a reasonable profit to the Contractor. Yet after his admission, he gave a new Contract to Mr. Crofts in 1779, at a much higher rate. Sir Eyre Coote had given an estimate of 4074, as the necessary number of Bullocks if the whole army should take the field. Mr. Hastings contracted with Mr. Crofts for 6700, at such a rate as made an annual difference of 60,000*l.* His Council had endeavoured to shew, that the new contract contained many provisions for the public benefit, which the old did not. These provisions were all for the benefit of the contractor. By the former contract any number of bullocks might be struck off at one month's notice. By the new contract, the whole number was to be paid for two years certain, and not reduced then but on six months notice. He next contrived to make the reduction expensive, by allowing half the prime cost on bullocks reduced, and twenty-five per cent. on the whole capital employed, of which the contractor advanced only one-fourth—and because this was an intricate mode of reckoning, he changed it to an allowance of so much *per* bullock. The date and circumstances of this transaction were of important consideration. In April 1779, Sir Eyre Coote made an unreasonable demand of extraordinary allowances; Mr. Hastings gave him three times as much as he asked; and in September following Sir Eyre Coote proposed this contract, which, he owned, had been planned by Mr. Hastings before his arrival. It took place soon after the first demand of 55,000*l.* a year on Cheyt Sing was realized; so that this unjust and extorted subsidy—extorted on pretext of the exigencies of war and an exhausted treasury—was almost instantly swallowed up in an allowance to a favourite. When their Lordships saw a Governor General breaking public treaties, and violating the conditions of a private bribe, in order to put money in the pocket of a creature of his own, they would be apt to think that there was something more directly personal in the business than appeared upon the face of it. Orders were sent out to reduce this extravagant contract; but in contempt of the orders, it was continued for three years and ten months, with a

loss of 243,000*l*. By the terms of it, it was to be prolonged to six years, unless notice was given before the expiration of the third year. This notice Mr. Hastings neglected to give, although all the circumstances were evidently before him; and scarcely had the term elapsed, when he entered into a bargain for relinquishing what it was his duty to have put a stop to without any bargain. He paid 6,000*l*. for the Contractor's stock, and then converted the contract into an agency at 17 per cent. commission. The loss of these was 10,900*l*. making with the former a total of 260,263*l*. He had since said, that contracts were a bad mode of conducting the supply of an army. He was generous of his advice, when he had no interest in the patronage; but almost every objection that applied to a contract applied to such agencies as he had established.

He came now to a transaction which he opened with regret, but it was perhaps one of the most unjustifiable in the government of India. Their Lordships knew that the allowance to the Commander in Chief had been fixed at 6000*l*. a year in lieu of all charges, making, with his salary of 10,000*l*. as a Member of the Council, 16,000*l*. a year. To this sum General Clavering had strictly confined himself. Sir Eyre Coote, soon after his landing in 1789, proposed that certain large allowances should be considered as devolving on him. The Council not reprobating this proposition, and pleading the express orders of the Directors, as they ought to have done, Mr. Hastings said, "We cannot give you these allowances, they are in the possession of another person, we will make another provision for you;" and instead of 8000*l*. a year which he asked, gave him upwards of 20,000*l*. It was after this that Sir Eyre Coote brought forward Mr. Hastings's corrupt Bullock contract; a strong instance of the chain in which one corrupt act followed another. Finding this sum inconvenient to provide, and difficult to account for to the Directors, he charged it on the Vizier, on pretence of an expedition for the protection of his country. Their Lordships had seen the treaty with that Prince, and the breach of public faith and private honour which followed it. Mr. Hastings pretended, that the allowance to Sir Eyre Coote was charged upon him by his own consent; but a letter from him in evidence, received the very day before that allowance was so charged,

set forth the distresses of his country, and the arrears due to his servants for two years past; and stated, that his only consolation had been the hope that the Company would enquire into the causes of his distress. Was it possible, after reading that letter, to imagine that such an additional burthen was fixed on him by his own consent? This charge was not only continued while the pretext for it lasted, but for three years after, when Sir Eyre Coote was serving in the Carnatic, and, as appeared, till the day of his death. Their Lordships had seen the letter of Mr. Crofts to the Resident at the Court of the Vizier respecting the allowance; and Mr. Hastings had said at the bar of the House of Commons, that "he had no doubt but he gave Crofts authority to write that letter." This proved the degree of confidence which Crofts, the Bullock Contractor, possessed both with Mr. Hastings and Sir Eyre Coote, and afforded a presumption of collusion among the three parties, which unless Mr. Hastings could meet and destroy, must have great weight with their Lordships. All the money extorted from the Vizier was in fact lost to the Company by the arrears to the troops in his pay, and deficiencies in the payments which he was legally bound to make. The sum lost by this allowance, while charged on the Company, was 12,314*l*. and while charged on the Vizier 71,000*l*. making together 83,314*l*. When their Lordships thus saw corruption originating in the Council, could they wonder that the whole mass should be diseased, and every principle of Government weakened and dissolved? What check from fear of punishment or loss of character could be left on any man? what restraint from plunder and peculation but conscience? and how great must be the danger when men were left with no support but their own virtue, and that virtue neither cherished nor countenanced by their superiors? Accordingly, wherever corruption or misconduct had been charged on the inferior servants of the Company, they had never answered by submission and promise of amendment, but by recrimination: "If I have peculated in this instance, you, my accuser, have plundered in that.—If I have been concerned in one job, you have been engaged in two." Thus charge had been answered by charge, and hence the evidence had been obtained, which enabled the Commons to bring those enormities before their Lordships. This single article

ticle represented a miniature of the whole political life of Mr. Hastings. It exhibited, first an act of corruption, then a breach of treaty and extortion, and last of all an accusation against Sir Eyre Coote, after he was dead, and there was no danger of an answer. Mr. Hastings had said, that he had sent orders to discontinue the payment of this allowance, but the order was sent to the military commissary, who, he knew, had nevertheless continued the payment, and not to the Vizier, by whom he knew the payment was still made. This was a mere subterfuge, to enable him more easily to satisfy the Directors that he had done something in obedience to their commands, although what he had done was rather an insult than an act of obedience. The Directors had been perhaps too easily satisfied on many occasions, but their corrupt facility was no excuse for their servants, who corrupted them.

The next article was the agency of Mr. Auriol. In December 1780, he proposed to supply Madras, and its dependencies, with provisions. His proposal was accepted, and the first interruption to the execution was on the complaints from Bombay of the extravagant price charged for rice, when they could supply themselves at a much cheaper rate. It was in evidence that he was appointed agent for all the other Presidencies; and a gentleman of extensive commercial dealings and high character had been examined, who stated, that five per cent on the purchase, was the usual commercial commission.---Mr. Auriol charged not *five* but *fifteen* per cent. not only on the purchase, but on the freight, and all other incidental expences. Commission on the incidental expences was unnecessary, and all above five per cent. on the purchase; and by this exorbitant charge the Company had lost 34,396l. He had also introduced a new system of accountship--a system of accounting, not by vouchers, but *upon honour*. How this principle came to be introduced in the mercantile transactions of a Commercial Company, it was not easy to conceive. It was a thing so absurd as to admit of no aggravation, from any mode of stating it, and could have been introduced for no purpose but that of fraud and deception. Were a man to come to their Lordships' Bar, and say, "Here are my vouchers, but you shall not look into them, I will be accountable only on my honour;" would

they not think that his honour in this sense was a substitute for his *honesty*? In their Lordships' bosoms was the pure sanctuary of honour. They felt and cherished the generous principle. To that principle they appealed unsuspected, when other men must appeal solemnly to the Deity; and he was sure they must reprobate its degradation to purposes so base and vile, as that of passing unauthenticated accounts. The Directors sent orders to reduce the Commission. Mr. Auriol generously offered to continue his agency without any profit, if he were but indemnified for the risk. Now the risk was all to the Company: every loss was charged to their account, and the Agent allowed interest for money in advance. And after this reduction Mr. Auriol, as appeared by the evidence, which had come out much stronger than the Managers expected, charged *twenty-five* per cent. on the purchase, and five per cent. on the incidental expences. He accompanied his gratuitous offer with the condition that he was still to account upon honour. This naturally induced a strong suspicion of the former transactions. Mr. Larkin, Accountant General at Fort William, having been ordered to examine Mr. Auriol's accounts, observed, in the grave and formal style of irony, "that he found them correct in the *additions* and *calculations*"; but the agent being *upon honour* with respect to the sums charged for the articles supplied, he did not think himself authorized to require any voucher of the sums charged for demurrage of ships, &c. On the same ground he thought himself bound to admit the sums acknowledged as received for the sales of goods returned, without requiring vouchers of the rates at which they were sold." Would not any man think that this report was made with a view of ridiculing the whole transaction? It was a great aggravation, that this agency was given to supply a province almost perishing by famine, and where not only rice was wanting, but money. Thus the treasury of Fort St. George was drained in a time of distress, and a monopoly erected for the benefit of an individual, which prevented competition, and stopped all the natural channels of supply.

It had been thought necessary for the defence of Bengal to establish a *dépôt* of stores and provisions. This General Clavering, who was responsible for the defence of the province, had always op-

posed;

posed; and when adopted, the allowance to the Agent was the subject of much debate in the Council. It was agreed to refer the decision to those merchants. Their report was twelve per cent. for replacing stores damaged or decayed, five per cent. commission, and three per cent. for servants—in all twenty per cent. Mr. Crofts, the Bullock Contractor, was one of the referees, and could not be supposed hostile to the views of Mr. Hastings. Yet after this report, Mr. Hastings proposed and gave an allowance of thirty per cent. Were the case to rest on this alone, the extravagance of the allowance would be strong evidence of corruption. Their Lordships would find, in the Minutes of Council on this subject, the strictest principles of economy and propriety recorded by those who opposed such profusion; and Mr. Hastings, to save appearances in some degree, undertook that Mr. Bellis the agent should keep accounts, and refund such part of the allowance as the Directors should think too much. Mr. Bellis, who was his private Secretary, did keep accounts, and in which their Lordships would see a charge of 10,000*l.* for articles too minute to be enumerated. They would also see that the loss on replacing stores in two years amounted only to 4,000*l.* and that the allowance of twelve per cent. on this head would have been 10,700*l.*; so that on the terms proposed by the Committee of Merchants, there would have been a nett profit of 6,700*l.* Mr. Hastings next proposed to convert this agency into a contract, which he did for five years, on the memorable 9th of August 1789, the same day on which he concluded the Bullock Contract. This was just at the time when Mr. Hastings thought his power on the eve of dissolution; when he seemed to say, "What shall I do to make the mischiefs of my government as lasting as I can? I will fix the expences of my system by contracts. I will put a speedy reform beyond the power of my successors: I will leave them oppressed with expences which I have created, to eat the bitter bread which I have prepared, and to be insulted by the claims of my dependants, who will have all the protection of law to support jobs, and who will, perhaps, have gratitude enough to allow me a share in the profits." Such appeared to have been the workings of his mind. It was no new inference from his conduct. It was an inference made by Mr. Francis at the time, who said, that were he to succeed to the Government, he would set aside

these Contracts if he could. Mr. Hastings had in some degree avowed his purpose. He had said, that when he saw a systematic opposition to every measure by which an individual might eventually be benefited, it was natural and just to put those who had done him service out of the power of his enemies. Like the unjust Steward, he was making friends of the unrighteous Mammon, in hopes that when deprived of his stewardship, some part of it would revert to himself.

Having gone through the several heads of the Charge, he recapitulated the loss to the Company on each.

On the Opium Contract	-	£.76,136
On the Smuggling to China	-	52,555
On the Bullock Contract	-	260,263
On Sir Eyre Cote's Allowance	-	83,314
On Anson's Agency	-	34,396
On Bellis' Agency	-	34,432

Total £.541,096

He had collected the several sums into one total, for the purpose of shewing, that when Mr. Hastings, by the plunder of the Begums, and all the maels of iniquity that attended it, obtained 500,000*l.* he had squandered a greater sum in five instances only. He had already shewn, that by the Bullock Contract he entailed a greater annual expence than the amount of the subsidy unjustly exacted from Cheyt Sing, and reduced his successor to the alternative of providing for that expence out of the ordinary revenues, or of continuing a subsidy contrary to public faith. His plea for many of his oppressive acts was State necessity. But he was not to avail himself of a necessity which he had created by corruption. The Commons had now presented a complete picture of the government of Mr. Hastings. Till this Charge was in evidence, it was not complete. It was now in full proportion and in proper colours. In the confidence that they had done all this, that they had done all that was requisite for substantial justice, and redress of wrong, they had been cautious of defeating their end, by too curious a pursuit of all that they might have pursued. In the two first Articles, they had shewn his tyranny and want of faith; in the third, his personal guilt in taking money for himself; and in the last, they had met his defence of State necessity, by shewing that, if necessity existed, it was the consequence of corrupt prodigality; that it was the consequence of sums lavished to attach a party to his interest, to enable him to defy the law, and secure wealth foully gotten by foul means. In

this prosecution they had many difficulties to surmount, and must see the conclusion of it with some satisfaction—when the task of investigation was transferred to their Lordships, when they were to complete and confirm the exertions of the Commons to improve the Government of India, to give to the natives peace and property, and secure the public virtue of their own country against the contagion of evil example. The approach of this period they saw with pleasure, with the fullest confidence in their Lordships' honour, and firmly persuaded that their decision would convince those who seem to think *Nihil tam sanctum quod non violari, nihil tam minutum quod non expugnari pecunia possit*—that it was neither to be invaded by fear, nor undermined by influence. To their Lordships the Commons now committed the prisoner; to their Lordships they gave the opportunity of confirming the opinion which the world entertained of their judgment and their justice. They had not shrunk from the obloquy of the prosecution. They had listened only to the suggestions of duty to the people of Great Britain, whose interest it was that corruption should be repressed, and the people of India protected not plundered, governed not oppressed.

Mr. Burke now addressed the High Court in a very short speech. He said, that all the Managers here cited their Charges. They did not proceed to any other of the Articles, and they approached this day with a mixture of confidence and solicitude—confidence in the justice of their cause—and solicitude that the highest Court which the Constitution knew would vindicate, not merely the principles of Government, but the dispensations of Providence; and would shew, that the territory so remote which Providence had subjected to the dominion of Great Britain, our Government had energy and ability to protect and cherish;—to shew that the junction of two countries so remote, was not unnatural and monstrous—out of the settled order of things, and productive only of evil and calamity to both—but that the principles of our Constitution had such vigour and activity, that the arm of British justice could extend even to the most distant regions of the earth, and manifest the dignity, the power, and the parental feelings of the country. They approached this day, when they were to cease from their labours with satisfaction—not because they were fatigued with the duty—not

because they shrunk from the other parts of the Charges which they originally brought to their Lordships' bar—but because they were ardently solicitous that the unhappy because guilty man (the prisoner at the bar) might come to his defence—that the justice due to his crimes might not be delayed—and that their Lordships might be relieved from the severe part which they had to fulfil in this national prosecution. The life of man necessarily shortened their labours—they were really anxious to bring it to a conclusion, and they yielded a cheerful obedience to the Honourable the House of Commons in here closing their accusations, and calling on Warren Hastings for his Defence.

What new mode of defence he meant to set up, he was utterly at a loss to anticipate. The prisoner's life had been diversified with alternate crime and apology; for even when in the meridian of his career, every act of his life was a crime against the orders of his employers; and he was immediately called on for an explanation, and an apology.—Such had been his course of life, and in every measure he had been condemned by his employers, and reprimanded, until now, that he was brought to the last agonizing struggle, solemnly accused, impeached, tried, and convicted, by the Commons of England. It was here, as he had said, that his had been a life of Impeachment—for his trial had not begun with the Charges brought to their Lordships' bar. His whole life had been spent between the commission of crimes, and the defence of them. Never was man, in truth, so prompt and ready with his defence---or who changed the form of his defence with so much facility.

When an enquiry was made by the Officers of the Crown into his conduct, he came forward with an apology. And when the House of Commons took up the business, and took it up in the fairest way, having all the Charges against him, together with all his apologies under their consideration, and when they were methodizing and putting them into form, he came forth unasked with another answer. This was delivered by himself—detailed---divided---and arranged under specific heads. They were read to the House by his confidential friends. But no sooner were the Charges brought to their Lordships' Bar, than he came forth again, and desired to falsify every defence he had made, to remove them from their Lordships' table---and that they would

would consider him as having made no defence at all.

Now he is to make his last defence—the defence which he must stand to—and he confessed he was anxious to hear what that defence could be. He complained of the hard language which had been used against him in the course of the prosecution. Hard language, was a mode of accusation which would do him no harm; for, unless supported by hard facts, abusive words would recoil on him who used them, and would pass like empty air over the head of an innocent man. His defence would shew whether the words which had been used were defamatory or not—and the Managers now called upon him for his defence. They called upon him in the name of the Commons House of Parliament—they called upon him in the name of the Commons of England to make his defence. The Managers would not detain their Lordships by any enumeration of the Articles, or of the points which they had proved. They left them to their Lordships. They called upon the prisoner for his defence, reserving only to themselves, their known and unquestionable right of replying to his defence, of calling evidence if they should think proper—and this right, in its full and unqualified degree, they claimed for themselves in the name of the Commons House of Parliament, and of all the Commons of Great Britain.

Here the Honourable Managers closed the prosecution.

Lord Kenyon, who sat as Speaker of the Court of Impeachment, said to Mr. Hastings, that it was now his time to make his defence.

Mr. Hastings said, that the Petition which he had taken the liberty to present to their Lordships still lay before them, and as they had not yet condescended to give their answer to his prayer, he was led to cherish a hope that they might pos-

sibly grant it. It was highly important to him, in his present situation, that he should learn their Lordships' pleasure on his Petition, that he might conform himself thereto in preparing his defence. At any rate, he humbly supplicated their Lordships, that they would indulge him with appearing at least one day more at their bar this year. He made his request in the event of their Lordships refusing the prayer of his Petition, and he trusted they would not think it presumptuous or unreasonable.

His defence had been anticipated, and remarks made upon it, in a way which he could not consider as perfectly fair. He would content himself for a moment with this single observation—that he would not attempt to justify his acts by the plea of State necessity. Though the necessities of the Bengal Government, when under his care, were many, various, and urgent, he would not place his defence on that ground; but would shew, to the pure and perfect conviction of their Lordships, that the measures so vehemently aspersed, were individually founded on honour, probity, and justice—and that they were consonant with the spirit and principle of the authority and instructions with which he was invested. If he failed to prove this, the harsh and hard terms which had been used against him he must acknowledge to be just.

As it was necessary for him to pause in the present moment, he again solicited their Lordships' indulgence that he might be permitted to appear at least one day more during the present Session at their Lordships' bar, and he would anxiously wait for their answer.

A message was sent down from the Lords after they returned to their Chamber of Parliament*, that they would sit again on Thursday next.

SEVENTY-

* On the following day, TUESDAY MAY 31, Lord King rose, pursuant to the notice he had given this day, and begged leave to call their Lordships' attention to a subject which he considered of the greatest magnitude and importance, not on account of the individual who was most interested in it, but as it materially concerned their Lordships and every subject in this country. He said, that on a former day, he had the honour of presenting a Petition* from Mr. Hastings; which, although it lay upon the table, still he could not say had entirely escaped their Lordships' attention; he must again bring the prayer of it under discussion. He then expatiated on the great length of the trial, the hardships that the prisoner must have suffered, and the uncertainty of the period when it would be ended. He was aware that objections might be made to the motion he intended to bring forward, on account of the probable duration of Mr. Hastings's defence; but in order to do away these, and clear up that point, he would, with the leave of the House, read a letter which he had received from Mr. Hastings on that subject, occasioned, as it stated, by his having given notice of his motion for this day:

* For which the reader is referred to page 67.

defence

SEVENTY-THIRD DAY.

THURSDAY, June 2.

The evidence for the impeachment being closed,

Mr. Hastings rose, and intreated the indulgence of their Lordships to allow him to read from his notes what he wished to offer as his defence. Lord

the principal part of the letter was respecting the time which he would require to make his defence; which, without meaning to enter into any thing like a compromise, he would limit to fourteen days; or if the House would not agree to that, to seven, being extremely anxious to have the trial finished before this session of Parliament was prorogued. His Lordship added a few more observations, and concluded by moving, "That an humble address be presented to his Majesty, praying, that he would be graciously pleased not to prorogue the present parliament until the Trial of Warren Hastings, Esq. was brought to a conclusion."

Lord Grenville said, he felt it to be his duty to rise as early as possible, and give his direct opposition to the Noble Lord's motion for many weighty reasons, some of which he would state to the House as shortly as possible. In the first place, he considered any such address as that moved by the Noble Lord, as an infringement upon the King's Prerogative, which the circumstance it referred to by no means warranted; and in the next, if their Lordships were to agree to this address, it could in no degree be attended with the effect which those who framed it intended it should; and as to the proposition of limiting to a certain number of days, weeks, or any particular period, Mr. Hastings's defence, it was too absurd to be attended to for a moment; and if it had been a practicable thing, would it not be an insult upon the dignity of the House, and the honour of their Lordships, were they to enter into any such compromise, by whatever name it might be called, as that proposed by the Noble Lord for the prisoner? He had said, even if it was practicable, but certainly no man could say it was. How did Mr. Hastings know the questions in evidence that his defence might occasion on the part of the House of Commons, or the delays that their Lordships might think necessary to examine and argue the nature of such questions? This surely the prisoner could know nothing of; and their Lordships well knew that great part of the delay which had taken place was occasioned by the various questions that arose in the course of the trial, which required to be discussed in their Lordships' House, and obliged them to interrupt the proceedings for the time.—Was it not possible, or rather, was it not very probable, that many questions of that nature would occur in the future proceedings in that business? And would any man, after this, treat that vague idea of finishing it in a limited number of days, with any thing else but contempt? So much he had said only as to the possibility of the proposal stated by the Noble Lord; but when he was to speak of the dignity, or, what was still of more consequence, the justice of making such a compromise with a prisoner at their bar, so as to oblige him to confine his defence to a certain number of days, when it was scarcely possible that he could state any thing like a refutation to all that he had been charged with, he was sure their Lordships would shudder at the idea of passing judgment either one way or other upon a person to whom they had not given an opportunity to defend himself, after having been accused in the most solemn and serious manner.—All this however respected their Lordships merely; but were the House of Commons to be left entirely out of the consideration? Might not they, by their Managers, assert their claim of replying to the defence of Mr. Hastings? and might they not go still further, and assert their claim to call more evidence in that reply, as well as to comment upon, or refer to any evidence that had formerly been given? Such a claim the Commons certainly had; there were precedents of its having been made, and there was no reason to think in this instance, that if the House of Commons thought it requisite, they would not assert it in their reply. Who then could have the confidence to say, that the defence or reply would be finished in a certain number of days, weeks, or months? Their Lordships knew well, that on some of the Charges, the speeches extended to such length, as to occupy their Lordships' attention for days; and this he did not mention as ridicule, because the trial was certainly conducted by men of as much ability, information, and constitutional knowledge, as any trial could be; and therefore, had they not thought it absolutely necessary to pursue the line which they followed, they would not have done it. Upon the whole, after a variety of observations upon the subject of the address, and the numberless inconveniences that would attend such a mode of procedure, he contended, that agreeing to it would be an infringement on the prerogative of the Crown, in a manner that was improper, if not wrong; and upon a point, that of proroguing Parliament, in which, of all others, they had the least right to interfere, and particularly when their Lordships must see that it was delegating that prerogative to several different powers, none of whom had the smallest right to exercise it. It was nothing short of vesting the King's prerogative in Mr. Hastings, in the Managers, in the

House

Lord Kenyon, who presided in the absence of the Lord Chancellor, desired Mr. Hastings to proceed.

Mr. Hastings then, from a written paper, proceeded in nearly the following words:—

“ MY LORDS,

“ HOW painfully soever I may feel my disappointment in not being able to bring my defence before your Lordships during the continuance

House of Commons, and in their Lordships, thereby making the Parliament completely independent of the Crown with regard to its own existence; an encroachment upon the Royal prerogative, which it would be no less improper than it would be indecent to undertake.

Earl Stanhope, when he came down to the House, did not mean to have said a word in this debate, nor would he have risen, but for the very extraordinary and wonderful doctrine which his Noble Friend and Relation had laid down, in what he had just now said. Their Lordships had been told, what he never would hear with patience, or pass in silence, that they, or the other House of Parliament, had no right to advise the King upon the exercise of any of his prerogatives; a doctrine which was of the most mischievous tendency, and ought no sooner to be heard than reprobated; and his Lordship undertook to convince their Lordships, if any doubt could remain amongst them on that point, that what the Noble Secretary had said on the impropriety of Parliament giving their best advice to the Throne, was a very unconstitutional way of speaking in that House. As to the object of the present address to shorten the Trial of Mr. Hastings, he believed every body wished it as much as he did; though, perhaps, all of their Lordships had not made it their business to attend that Trial so constantly as he had done, having never been five minutes absent from it. He had asked Mr. Hastings' Counsel some days ago, what time the defence would require, and they could not tell him; upon which he certainly had determined to vote against any address for the continuance of the session until it was concluded: now, however, he had changed his mind, when he heard the Noble Lord state, from the best authority, that it would only require seven days, if their Lordships thought proper not to grant more: from this, therefore, he was inclined to vote for the address, but at the same time thought that it might be amended, so as to be more likely to meet with the concurrence of both sides of the House: the amendment he would propose was, that the Parliament might not be prorogued until Mr. Hastings had finished his defence.

Lord Mulgrave replied to Lord Stanhope in a speech of considerable length.

Lord Hawke said, it was seldom that he troubled their Lordships, and he did not mean to detain the House long on the present question.—He certainly agreed with the Noble Earl, that the Houses of Parliament had a right to advise, though not to dictate to the Crown; and upon such occasions it had been usual when an address, like the present, was presented to the Throne, to have for answer, that his Majesty had received their address, and would be graciously pleased to take it into consideration; and this had generally been accompanied with his desire to proceed in the business to which the address related, with all convenient dispatch. With the leave of the Noble Lords who had spoken before him, he would move an amendment, to leave out all the words after “ That an humble address,” and that there he inserted other words, so that the motion thus amended would stand, “ That an humble address be presented to his Majesty, humbly to state to his Majesty, that the Commons having closed their evidence upon the Trial of Warren Hastings, Esq. and this House being desirous to proceed to the hearing of his defence, this House humbly requests that his Majesty will be pleased to take the same into his Royal consideration.”

Earl Stanhope and Lord King, approving of the amendment, withdrew their motions, with the leave of the House, and the question being put,

The Marquis of Lansdowne rose. He said, he knew nothing of an intention to move such an address as that now before their Lordships, until he saw by the newspaper that morning the notice that had been given of it. In his mind, none of the Noble Lords who had yet spoken in the debate had taken up the business in a proper point of view. As to the extraordinary doctrine that the Noble Secretary had introduced into the debate, stating, that their Lordships and the other House of Parliament had no right to advise his Majesty on the exercise of his prerogative to dissolve or prorogue Parliament, it was an assertion that few would have made in that House, and which he scarcely, at his time of day, expected to have heard from a Minister in his place; but as that part of his speech had been very properly and fully answered by the Noble Earl, he would not say a single word more upon it, farther than that if it was admitted, and Ministers were allowed to come down to the House with such arguments, it was needless for their Lordships to meet or deliberate upon any subject of importance to the country, as most matters of importance might be somehow connected with the royal prerogative; and whether it was to point out the ruinous consequences of a Russian war—

continuance of the present session, I nevertheless believe it to have been an indulgence which your Lordships would, if you could, have granted; but which it was not in your power to grant, without such a sacrifice as an

individual, supported even by the call of justice, in a Trial which is become of such magnitude and consequence as to attract the attention and alarm the interests of thousands, could not expect; and I do therefore, with the

the necessity for establishing a peace—or any other business of equal consequence to the country, where the advice of Parliament might be useful and proper, the Ministers would tell them, “You have no right to interfere with the King’s prerogative: in our opinion, our own conduct has not occasioned circumstances that warrant your advice;” and thus, instead of calling together Parliament upon any great emergency, the present Ministers meant to introduce a new method, and send them about their business as an useless and troublesome body, when they had much work upon their hands, which they, no doubt, could carry on much better without any Parliament: this he took to be the precise state of the Noble Lord’s doctrine.—As to the Impeachment, he was sorry that Noble Lords, both to night and on the question of Abatement, seemed to have a great deal too much feeling and consideration for Mr. Hastings; and regretted much, that any possibility of bringing the Trial to a speedy conclusion would deprive him of making to proper and ample a defence, as they wished him to have an opportunity of doing. Now, with all due submission to their superior judgment and humanity, he thought he might, without any great danger to Mr. Hastings, or the cause of justice, suggest, that if he was content to finish his defence in a given time, he and his Counsel might be allowed to know whether such a proceeding was likely to be of service to his cause or not.—At any rate he could not avoid saying, that by making such a proposal, Mr. Hastings seemed to have a conscientiousness and reliance upon his own innocence, which induced him even to trust his defence, such as it might be in the short time he was to make it, not only to their Lordships, but open to the reply of the Managers, and especially if, as the present motion stated, the defence only was to be made this session, and that and the accusation to be in their possession all the intermediate space; which he owned was certainly, however unfavourable or otherwise to Mr. Hastings, a much fairer way of making up their minds and preparing for the solemn task of judgment, than from any notes that they might have taken at different times in the course of the Trial. He said, there was one point with regard to the whole of this long-continued persecution.—(Here Lord Hardwicke called the Noble Lord to order, and asked, Whether it was decent to apply such an expression to the Trial and Proceedings of both Houses of Parliament?—The Marquis said, he would call it prosecution then, if the Noble Lord preferred the word; but) what he meant to say was concerning a point wherein the conduct of those of the present Administration who had taken part in supporting this Impeachment, appeared to him to be inconsistent; which was, that it was notorious that the very same measures and system of Government for which Mr. Hastings had undergone this long protracted Trial, were now pursuing in India, approved by the Government there, and sanctioned by the Board of Control at home. As to the Commons, he thought if their Lordships were as clear of the propriety to conclude the business as speedily as possible, they would certainly agree to this address. The Commons had exhibited Twenty Articles against Mr. Hastings, and were now content to sum up and finish their prosecution, when only Four had been gone through. As to their claim of reply, and bringing evidence after the defence was concluded, though he did not mean to say that there would be no such claim, he thought the less it was insisted upon the better, and that it was a claim not to be asserted before any other Court in the kingdom in any criminal case, except in the case of Impeachment. And certainly, he concluded on this point, if it had ever been a claim founded either on justice or reason, it would have been introduced into the Courts below; for, in his mind, there was little difference to the subject, whether he was to be tried in that House or any where else. Having treated the conduct of Ministry with a good deal of asperity, he said, that it must appear obvious to every person acquainted with the present situation of this and other countries, that the Impeachment had nothing to do with the prerogative of Parliament; there were other reasons for adjourning; they knew the anxiety and alarm that prevailed all over the country; they knew that we had a fleet ready to sail at the shortest notice, and that the country was likely either to be suddenly embroiled in a ruinous and burthenome war, or additionally loaded with the expence of fruitless armaments, to back the mockery of their bullying threats and demands; all which they likewise knew must induce the people, and those whose duty it is to watch over their interests, to make some enquiries that would not be either pleasant or profitable to their ridiculous, wild, and mistaken politics. Knowing this, they had wisely determined to prorogue Parliament, and by those means get rid of all enquiry, the result of which

the most patient and respectful submission, bow to your determination

"I am thankful for your allowance of this one day in addition to the present session.—I hope in such a manner to avail myself of it as to compensate to your Lordships no less than to myself for the trouble of this short attendance, and to induce your Lordships to put an end speedily, and for ever, to my long and unexampled prosecution

"It was not my intention, had your Lordships complied with the prayer of my petition, to bring a laboured defence before you, applicable to every allegation in the Articles of the prosecution. Neither could I hope that your Lordships would endure the time which would be required for it; nor could I, if I would, produce all the evidence which would be necessary for such a mode of defence.—Of thirty-four gentlemen who compose the list of witnesses, whom I had originally selected for examination, to the different and successive allegations of the charge, some are dead; some returned to their service in India; others after an annual, but fruitless and disheartening attendance, dispersed in unknown parts of these kingdoms, or, for aught that I can tell, in the remote regions of Europe.—Those whose attendance I could engage are very few in number, chiefly gentlemen connected with me by the habits of familiar intercourse, and their testimony, for that reason, liable to be depreciated by the licence which the Managers have assumed with the characters of those, even of their own witnesses, whose evidence has not answered their expectation of it.

"These, though competent to speak in my behalf in matters of comparatively less importance, may be unacquainted with the greater points in my defence. My evidence, however selected, could not be so complete as it might have been, upon some points, because those, from whom stronger testimony might have been delivered, are no longer within my reach.

"In such cases, would your Lordships admit it as an excuse for insufficient evidence, that I should have had better to

produce, had my Trial been brought within the compass of a reasonable time from its commencement? Would it have been permitted to me, for instance, to produce the minutes taken by my Counsel and Solicitor, though attested by them upon oath, of the examination of the late Lieutenant-colonel Eaton to a series of acts committed under his immediate notice, and all proving incontrovertibly the disaffection of Cheyt Sing, and a determinate plan to erect his independence on our external and growing difficulties? Yet I have no other so strong to offer to these points in corroboration of that of which your Lordships are already in possession; and of this I am deprived, not by any neglect, or other cause which could be imputed to me, but only by the effect of that unparalleled injury which I have suffered, by the extension of a criminal Trial beyond the chances of duration in human life.

"This disadvantage, which every past year has augmented, every coming year will continue to augment, if it has not already attained that point, at which any evidence which I could call, would be ineffectual to the real uses of it.

"Nor is it of the insufficiency of any future evidence only that I complain. Even of the past, I may express my fear that much must be obliterated, and the whole rendered obscure from the various lapses of time since it was delivered, and from the impossibility of distinguishing accurately between the remembrance of proofs, and the remembrance of mere allegations.

"Every year has taken from me some of my Judges. New have succeeded, some by creation, some by inheritance, and others by election. None of your Lordships will suppose I mean any disrespect, when I observe that these cannot be supposed to possess, or to be capable of attaining, the same knowledge of the past proceedings as those who have attended to them from the beginning; and every obstruction to that knowledge is an injury to my cause, if mine is, as I assert it to be, the cause of truth.

which might force them to say or do any thing that was likely to give satisfaction to the people or to Parliament.

Lord Grenville entered into a warm and spirited defence of those who had supported the Impeachment in the House of Commons, where he had the honour to be at that time; and if there were any amongst their Lordships who felt that the censure came home to them, he would be sorry for it; however, he did not believe there was one in the House who could accuse himself of having done any thing in that business, that was inconsistent either with his honour or duty. The illiberal and unkind insinuations of the Noble Lord would have but little effect, being equally groundless and misapplied. He denied, that he had in his former speech asserted, that Parliament had no right to give advice to the Crown. What he said was, that some sort of delicacy should be observed in meddling with the King's prerogative, except when circumstances warranted their interference, and that he saw no necessity for it on this occasion.

motion was then put, and the motion for the address negatived without a division.

"With so many examples of the uncertainty of human life, I cannot help adverting a little to my own. I thank God that I have had a more equal portion of health since the commencement of this Trial, than, considering the broken state of my constitution, my advanced age, and the vexations of a six-years prosecution, I could have reasonably hoped to possess. Yet I have not been wholly exempt from such warnings as make me dread to trust to the contingency of another year, the chance of an event so necessary to my peace of mind, as the termination of this tedious prosecution, if by any present effort I can obtain it from your Lordships.

"For these reasons, and others operating with a stronger force upon my mind, though unnecessary, and, perhaps, less fitting to be detailed to your Lordships, I have formed the resolution, for which I solicited my appearance on this day, before your Lordships, and for which I am alone responsible, whatever may be the event of it.

"I deem it just to my Counsel to declare, that although, in all matters of a legal nature, I should rely most implicitly upon their advice; and although I have no less reliance upon their personal zeal and attachment than on their professional talents, yet in this instance I have followed the impulse of my own judgment alone, without the aid of theirs, and even against it; for it was not a decision subject to the rules of legal practice, but urged by internal considerations, of the force of which I alone could be the judge.

"If they could have made my case so absolutely their own as to have felt the same impression of it upon their minds, that it might make upon mine, still they could not advise me to act upon that impression with hazards by which I alone might be the sufferer, and which it might be possible to avoid by waiting to a distant, though indefinite, season for a surer termination of my Trial, by a regular and detailed process.

"My Lords, a great portion of my life has passed among a people with whom it is an established and favourite maxim, that *SPEEDY INJUSTICE IS BETTER THAN TARDY JUSTICE*.

"I shall not adopt this sentiment in the literal extent of it; nor from your Lordships shall I expect other than, at least, intentional justice: but even to your Lordships, highly as I revere your authority, and trust to the purity of your decision, I will dare to avow, that I had rather expose myself to the hazard of your present condemnation, if I thought there was a hazard of it, than wait to another year for my acquittal, with the uncertainty, that even that year would conclude the Trial.

"But with far different expectations, I now declare to your Lordships, that I am

willing and desirous to waive my defence to the charge preferred against me by the Commons of England, and to refer myself to your Lordships' immediate judgment, if your Lordships will be graciously pleased to proceed to IMMEDIATE judgment upon it.

"For my acquittal I trust most confidently to the evidence adduced by my prosecutors themselves to make good their charge; having myself listened with an attention scarce ever relaxed, or diverted from the proceedings; and being satisfied, that not one criminal allegation of the charge has been established against me, and almost every one refuted by their own evidence, either by the replies of their oral witnesses, or by the written documents, or their context, added by the vigilance of my Counsel to the partial and mutilated extracts from them which were introduced by the Managers.

"Your Lordships will try my conduct by the evidence which my accusers have brought before you—not by their speeches. They were sent by their employers to accuse me, and to prove their accusations, not to revile me, much less to expatiate with all the licence of unrestrained declamation upon crimes which their constituents had not authorized them to charge against me. But although I have reason from my own observation to believe, that their laboured invectives produced on your Lordships' minds impressions favourable to my cause, in proportion as they were contradicted by the evidence before you, yet it was not to your Lordships' hearing alone that their invectives were directed.

"It is the custom of this country, and I applaud and admire the motive and the end of it, that the Court before which the Trial is heard, should be open and free of access to the whole world. But, my Lords, this custom puts my fame and honour at issue with other judgments than your Lordships, and their judgments are formed not like yours, upon calm investigation, and cool unbiassed wisdom, decided on the evidence only which has been stated; no, my Lords, the audience come with other minds, and with different motives. They come to hear the declamations of invective, and to be amused by the ingenuity of the orators. Bold assertions, however unfounded and unjust, are believed by them, because they are boldly made, and heard without refutation or denial. Misled by the arts of eloquence, they are deceived into opinions, of which it is impossible they can either detect the fallacy, or perceive the imposition.

"They are pleased and deluded by the talents of the orator; and whatever prejudices he wishes to create in their minds, they of necessity receive, and, after the entertainment of the day, depart with their passions inflamed,

flamed, to communicate their effects to the circle of their acquaintance.

"I know your Lordships do not consider such declamations as any legal proofs, and I am confident you will not suffer them to make the slightest impression on your judgments; but is it possible that the general effect of them thus spread abroad, can fail to embitter my life, and affect my peace in society, as long as the Trial lasts, by producing all the ill consequences on the public opinion, of a condemnation? for I fear, my Lords, that the axiom of the English law, that every one is to be presumed innocent until he is proved guilty by his Judges, will weigh but little when opposed to prejudices so conceived and disseminated.

"It is impossible for me to refer Judges of this description, and unnecessary for me to refer your Lordships, for the true criterion of my conduct, to the real and legal proofs; I mean to the evidence adduced, and adduced even by my prosecutors themselves; and I dare to repeat, that this evidence alone is sufficient for my acquittal, so far as it extends; and that where it does not acquit, it does not in a single instance operate to my conviction.

"My Lords, the delay has, in some measure, been imputed to myself; how unjustly is known to your Lordships, and to all who have attended this Trial. It has been said that I might have answered Article by Article.—That proposal was rejected by my Counsel, who alone were capable of judging of its propriety: but, my Lords, who could have thought that four sessions would elapse before I should have an opportunity of answering? There was no precedent in the history of this kingdom of a criminal Trial lasting even through one session of Parliament, much less through five.

"It was impossible for me to avail myself of the experience of others in this case, though posterity may avail itself of mine. But, my Lords, with respect to wilful delay on my part, there never was a more unfounded assertion; for whilst my accusers have their expences borne by the public*, I am continually wasting my private fortune, and that so rapidly that every day's delay amounts to a fine. This circumstance alone was sufficient to exculpate me from every charge of delay and procrastination: and this circumstance,

my Lords, contributes its share (though I own but a small share) in urging me to solicit your immediate decision.

"My Lords, it would be an endless task to enumerate all the items of accusation which have been made use of against me during the course of this long and tedious Trial. I have been represented by one of the Managers (to use his own terms) as an Encyclopedia of Criminality. It is, however, generally speaking, sufficient for the person accused to give a general denial to general charges. But it will not take up much time to state to your Lordships the substance of the general charges so often repeated, and so loudly proclaimed at your Lordships' bar, and to the public.

"You have been told that I have ruined and depopulated the provinces entrusted to my care; that I have violated treaties, and brought disgrace and discredit upon the British name in India; that I have oppressed the native inhabitants by my extortion, or arbitrary demands of money; that I have wasted the public treasure by profusion; and that I have been guilty of disobedience to the orders of my superiors. This is the substance of the general charges urged against me; and it is a great happiness and comfort to me that I have it in my power to answer them by facts of such public notoriety, as to require no proof.

"My Lords, in a situation of the FIRST, namely, that I ruled the country committed to my care, I need only say, I increased the revenues of my government from three millions to five. They have increased since my departure, and are still increasing; infallibly proving thereby an increased population, and a good government in former years. The accounts delivered annually to the House of Commons by the Minister for India are, indeed, the best answer that can possibly be given to the Charge which I am now speaking of.

"In answer to my having violated treaties and brought disgrace and discredit on the British nation, I desire to inform your Lordships, that the letters of Mozuffer Jung † and Fyzoola Cawn ‡ to my successor in office were laid before the House of Commons.—They requested to be treated by him as they had been treated by me. To these I may add, the letters of Moodajee Boorda §, the Sovereign of Berar, to Mr. Macpherson

* The public have already paid, on account only, above forty-five thousand four hundred pounds for the expences incurred by the Trial.

† Mozuffer Jung is the Nabob of Furruckabad, and Fyzoola Cawn the Rohilla Chief of Rampore.

Two of the Articles of impeachment have their names, but both have been abandoned by the present House of Commons.

‡ The first in rank of the Mahratta feudal Chiefs.

power he speaks of me in the most honourable terms, and expresses an anxiety for my health, far beyond the common course of compliment. If farther testimony were requisite, I might also quote the letters of Nizam Ali Mook to his Majesty, and of Madajee Scindia † to his Majesty, and to the Company, yet more strongly expressive of their sense of my justice and good faith.

“ In answer to the Charge of my having oppressed the natives by extortions and exactions, I have to offer the testimonials of all ranks of people in India in my favour. I trust your Lordships have not forgot what my accuser said upon this subject two years ago. When these memorials arrived, he felt the weight of them. He found the situation of an accuser to be very awkward, when the people, in whose name he had charged me with the grossest oppression, denied the truth of his accusations. He told your Lordships that the testimonials were extorted, and, in a figurative manner of speaking, he said, “ that the hands were yet warm with the thumb-screws that had been put on them.”

“ The absurdity of this declaration was such as to require no answer. My influence in India has long ceased. It is very seldom that mankind are grateful enough to do even common justice to a fallen Minister; and I believe there never was an instance in the annals of human nature, of an injured people rising up voluntarily to bear false testimony in favour of a distant and persecuted oppressor.

“ In answer to my having squandered away the public treasure, I have only to refer your Lordships to the amount of the expences, civil and military, of the government of Bengal during my administration, and that of my successor, in peace and in war: let the balance, which is very considerable in my favour, determine whether I have been profuse or economical.

“ In answer to the general Charge of disobedience to the orders of the Court of Directors, I will not pretend to say that I have in no instance deviated from their instructions; most assuredly I have; but wherever I have done so, I trust I shall be able to justify those deviations by the necessity of the case, and by the event.

“ That the Court of Directors were satisfied with the general line and tenor of my conduct, is evident from the thanks which I have been repeatedly honoured with by that body.

* The Chief or Subahdar, or Governor of Decan.

† A Mahratta Chief, who held a considerable territory in the West of India, and connected, during the administration of Mr. Hastings, by a separate treaty of alliance with the Com-

“ I have farther to say, that the general sense of the Proprietors has been at all times in my favour; for I have had repeatedly their thanks also, in the fullest and most unqualified manner.

“ My Lords, I am sensible, that though I had the thanks and approbation of my superiors in many instances, and though it is acknowledged by many of those who voted for my impeachment, that my services were of the utmost importance, and, in fact, have preserved India to this country, I am sensible, I say, that notwithstanding these thanks and services, it is still possible for me to have committed many reprehensible actions, and that the performance of a thousand meritorious deeds, is no proof of innocence in other transactions.

“ My Lords, although I have fully and irrefutably answered all the general charges urged against me, I cannot expect you will give me credit for perfect innocence in every particular instance, unless that innocence were proved by evidence now before you; and it is with a view of recalling your Lordships’ attention to that proof, that I shall now enter into a cursory examination of the criminal points contained in the four several Articles which have been brought before your Lordships.

“ It cannot be expected I should reply, in the space of one day, to every minute allegation which my accusers would have your Lordships behold in a criminal point of view. The want of time will not permit to go into a detail; and I must therefore direct my attention to the great points of criminality, as they are called by my accusers.

“ The first Charge which was brought before your Lordships (I am sorry to say now more than three years ago) was, that respecting Benares—and the points to which criminality is imputed are principally these: That I violated a treaty with an independent Prince, by unjustly compelling him to pay five lacks of rupees annually for three years; that I caused his person to be arrested, and that I intended to impose upon him an enormous fine for imputed delinquency; that I expelled him from his country, and appointed a successor with a stipulation of seventeen lacks of rupees advanced rent to the Company.

“ My Lords, these are the supposed principal points of criminality in the first Article. These are not all; but the remainder are of

an inferior nature, and so dependent upon the one which I have enumerated, that they must stand or fall together.

" My Lords, there is abundant evidence adduced by my prosecutors to shew that Cheyt Sing was not an independent Prince. He was, as his father and grandfather had been, the vassal of Sujah Dowlah. The districts of Benares and Ghazepore were transferred to our government by the present Nabob of Oude, at a time when I myself could not be answerable for any of the acts of Administration, being then in a minority.

" My Lords, it is true that my accusers took infinite pains to prove that Cheyt Sing was made independent of our government in every respect, except that of paying to it annually twenty-three lacks of rupees, and that we had irrevocably bound ourselves down not to exact, in any case whatever, a larger sum than that just mentioned. All this body of proof is collected from the discordant minutes of the different Members of the Council, and from the resolutions of the whole. Upon these minutes and resolutions they have rested Cheyt Sing's right of independency.

" My Lords, I scarcely need tell you, that whatever our various resolutions or opinions might be, individually or collectively, they could not affect the right or title of Cheyt Sing to the Zemindary, nor the tenure by which he held it. He was neither more nor less than a Zemindar. His Sunnud and Pottah were made out, not from a copy of stipulations and agreements between him and the Company, but from the common formulae of such instruments granted to Zemindars in the Company's original provinces. The Rajah never pretended any right to stipulate or demand: he was content with what the Company was pleased to allow him.

" My Lords, I do again insist upon it, that no arguments, votes, or resolutions, of our Board, could confer any right or title upon Cheyt Sing, which he did not possess from his Pottah and Sunnud; therefore the whole of the evidence, which the Managers have brought respecting our various opinions on the rights of Cheyt Sing, is null and void; and he must be considered the same as any other Zemindar of the British government, with the exception of certain privileges conferred upon him, which were accurately defined in the Sunnud and Pottah.

" Perhaps there never was a more unfair attempt to delude a Court of Justice than that of making me answerable for violation of a treaty with an independent Prince, who had no other claim to independence than that of being so styled in some of our debates in Council, through the inaccuracy of language.

" It follows from what I have said; that if every Government has, in time of danger and necessity, a right to increase the taxes and revenues upon their subjects, we had also the same right to increase the tax, rent, or revenue or whatever name he given to Cheyt Sing's yearly payments, upon him, who was our *subject*, whenever necessity should require it; and of that necessity Government only could judge.

" These, my Lords, were my sentiments at the time when I moved in Council for a temporary subsidy to be paid by Cheyt Sing. These are my sentiments at the present moment. I considered taxation and protection as inseparably arising from each other. I never did look upon the Sunnud as exempting Cheyt Sing from the customary demands which all superior States in India make upon their dependants in time of war; namely, that of aid both in money and troops. To this point of right in our government, to demand aid in troops and money during a war, I must entreat your Lordships most particularly to attend; for if your Lordships shall be of opinion with His Majesty's Prime Minister, an opinion delivered with much solemnity in the House of Commons, that our Government did possess the right, then all the criminality imputed to this demand of a contribution of Cheyt Sing vanishes, and is totally annihilated. But should your Lordships think otherwise, which I cannot for a moment suppose, in that event my guilt will be a mere error of judgment, which is rather a weakness of human nature than a fault.

" Again, if your Lordships think with me, that we had a right to call upon Cheyt Sing, then the next question will be, whether our demands were too great for the urgency of the occasion, or beyond his ability to comply with. The sum demanded was only five lacks, and it was not made till after we commenced a war with the Mahrattas, and had received intelligence of a war with the French, and thought ourselves in danger of an invasion.

" My Lord, I need not enter into a detail of the various objections, difficulties, and delays, which Cheyt Sing made in the payment of the required aid. It is sufficient to acknowledge, that I went upon the country determined to call him to account for his misconduct. The result was his imprisonment and rescue, a rebellion, and his consequent expulsion from his country.

" My Lords, if we had a right to an extraordinary aid from our Zemindars in time of war, we had a right to enforce that demand. We did enforce it upon Cheyt Sing; but it was attended with so many increasing difficulties and delays, that it almost rendered abortive

abortive the purpose it was intended for at a most critical season.

"My Lords, it is urged against me as a matter of great criminality, that I gave the Rajah Cheyt Sing under arrest. It is true, I did so; but his arrest was not attended with any disgraceful restraint, for it was in his own house.

"It is also urged against me with much acrimony, that I intended to lay a fine on the Rajah of fifty lacks of rupees. The sum is undoubtedly large in sound; but it by no means exceeded the ability of Cheyt Sing to pay it with ease, as is evident from the treasures left behind him after he had employed all his carriage cattle to export his gold and jewels to a foreign territory. He must have been immensely rich; and a small fine would not have been felt as any punishment by a man of his opulence. But, my Lords, whether I was wrong or right in my intention, I had no other view in it than that of relieving the necessities of the Company, by an act which I conceived to be strictly just. And after all, there certainly can be no crime in an unexecuted intention, an intention which the Rajah knows not to this hour, and which I possibly might have altered upon the Rajah's submission and promise of better conduct.

"The next point of criminality is, that I appointed a successor after the expulsion of Cheyt Sing, and increased the revenues to seven or eight lacks of rupees annually.

"My Lords, there was no alternative between the restoration of Cheyt Sing, and the appointment of a successor. The former was impossible, and the latter consequently unavoidable. In my choice of a successor, I was guided by the rules of consistency and hereditary succession; and in settling the revenues, I did what my duty to the Company required of me. I fixed their amount from the best information of the country's abilities to pay it; and the annual payments of the same sum, from that time to the present, with trifling balances in some years, which have since been realized, are a sufficient testimony of its not being over-rated.

"Before I quit this Article, it may be necessary to call the attention of your Lordships to another point:—Acting, as I am, under a delegated authority, I maintain, that whenever my superiors had information, both of my opinion and conduct, and expressed no disapprobation of either, their silence amounted to an approbation, and may be justly pleaded by me as a full justification of my conduct.—When I first proposed the demand of five lacks of rupees a year during the war, a doubt was started by Mr. Francis as to our right of making it; I recorded my opinion,

that we possessed that right which is inherent in all Governments, of calling upon their subjects for extraordinary aids upon extraordinary emergencies, and that we were not precluded from exercising that right by any engagement made with Cheyt Sing.

"A second debate arose at the Board upon the same question in consequence of his delays and evasions, and a pointed reference was made of the question, in both instances, to the Court of Directors, from whom I never received one word of censure or disapprobation to what we continued to do, and regularly reported in our letters and minutes, for three years successively. The same communication was made to His Majesty's Minister, the present Earl of Guildford, with whom, at his own request, I corresponded for many years.

"My Lords, it would be an extremely hard case to make me answerable for an error in judgment; into which if I have fallen, I have fallen in common with my immediate superiors, and His Majesty's Minister.—But, my Lords, I feel myself so strong, so grounded on the matter of right, that I hold it almost impossible there should be a dissenting opinion in any human being who will be at the pains of examining the question with impartiality.

"My Lords, in the course of this Trial my accusers, to excite a popular odium against me, have called me the abettor or usurper of arbitrary power. I certainly did not use the words *arbitrary power* in the sense which has been imputed to me. The language, it is true, was not my own, for I was indebted for that part of my defence to the assistance of a friend; but this I can aver, that nothing more was meant by *arbitrary power* than *discretionary power*. I considered myself and Council as invested with that discretionary power which Commanders in Chief have over their armies, which the Legislature has lately conferred in a greater extent on Lord Cornwallis singly, and which all Governments have in their legislative capacity over the property of their subjects. I never considered that my will or caprice was to be the guide of my conduct, but that I was responsible for the use of the authority with which I was invested, to those who had conferred it on me.

"My Lords, let me be tried by this rule: Did I act prudently and consistently with the interest of my superiors, and of the people whom I governed? Whatever may be your Lordships' opinion upon this question, I can with a safe conscience declare to all the world, that my intentions were perfectly upright, and biased by no selfish considerations whatever.

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" My Lords, having said thus much on the subject of the First Article, I must pray your patience whilst I make a few comments on the Second

" The principal point of imputed criminality in this Article is, that after the Supreme Council had guaranteed the Begum in the possession of the treasure left in her custody by her deceased husband, Sujah Dowlah, I permitted her son to resume by force the said treasure, and thereby violated the guarantee. In order to influence the minds of your Lordships and the Public, great pains were taken by my accusers to represent me as guilty of the most atrocious cruelties and barbarities in the act of resumption. I have, however, the happiness to find, that it is totally unnecessary for me to enter into an exculpation of myself with regard to the latter part; for the evidence of Captain Jacques and Major Gilpin clearly proves, not only that no cruelties were committed in the manner which is stated in the Articles, but if there really had been any cruelties committed, no blame could be imputed to me, nor to any person acting under the British Government. That the resumption of the Begum's jaghires, and the resumption of her treasure, had my approbation, I readily admit; nay more, I admit, that after I had given my consent to the Nabob's resuming all the jaghires, and resuming all the treasure, I did earnestly urge him to carry his intentions into effect.

" My Lords, at the time of my giving this consent, I was, from the intelligence I had received, fully convinced of the Begum's disaffection to our Government. It was not my opinion only, but it was the general rumour of the country, that she and her Ministers aided and supported Cheyr Sing in his rebellion. That such was the general rumour and public opinion, is evident from the affidavits already before your Lordships; and notwithstanding the ingenuity of the Managers, who laboured to explain away their meanings, they still contain and afford the most ample proof of the hostile intentions both of the Begum and her Ministers towards our Government. But had the continuation of this session enabled me to enter in to a detailed defence, I could have brought the most irresistible evidence to prove, not only the general rumour and opinion, but also that the Begum did, through her Ministers, actually lend her assistance to our enemies.

" My Lords, I believe there is no State in the world that considers a guarantee, made in favour of another State, binding any longer than whilst they continue in amity with each other. The first hostile act of the party guaranteed is, and must be, a sufficient reason for withdrawing protection.

PART IV.

" It is not expected that we should protect our enemies. It is true, the Begum could not be considered as the Queen or Empress of an independent State; she was properly a Jaghiredar, under the dominion of her son; and, perhaps, there was much more interthal criminality in making the guarantee, than in withdrawing it. The act of making it was not mine; it was done by the Resident without the knowledge of the Board; but it had their approbation after it was done. Neither do I contend, that our Government was not bound to the fulfilment of the conditions. But as a great clamour had been raised without doors about the resumption of the Begum's treasure, and as it has been represented as a most unnatural act for a son to rob his mother, I hope your Lordships will allow me to state and explain the matter.

" When Sujah Dowlah died, he left a large sum of money in the custody of his wife: she had been his treasurer, and was so at his decease. By the Mahomedan laws, the widow having a dower settlement, is not entitled to any share of the intestate's effects. Sujah Dowlah died without a will; and though possessed of a very large sum of ready money, was also very deeply in debt. His debts, if paid, would probably have consumed every rupee in his treasury. In India, as in all other countries, debts must be paid, if there are sufficient assets, prior to legacies, or any distribution among the heirs. In any point of view, the Begum had no legal right to the treasures of her deceased husband: she had no right, except that of possession; and of that her son would have forcibly deprived her, had not the Resident interfered with his conciliatory advice between them. Nothing could excuse his interference, but the consideration of the near relationship between the parties, and the certainty of the Nabob's having his just right at the death of his mother. Had my accusers thought fit to have taken the other side of the question, they could with as much ease, and with much more justice, have influenced the minds of their hearers against the mother for her unnatural conduct to her son, than they did influence them against the son for ill conduct to his mother.—I say with much more justice, because the son had a right by the laws of his country, which his mother had not. If the latter was deprived of the treasure, she was only deprived of her some years later, of what she could make no use, and which she ought voluntarily to have given up some years sooner. My Lords, I take this on the equity of the case; for though it may be contended that the Begum had a right to the treasure, by the Nabob's concession and our guarantee, she never had, nor could have, an equitable right to retain it. There would

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have been nothing unjust or unnatural in the Nabob's taking by force the treasure left by his father, if he had done it in the first instance, and appropriated it to the payment of the immense debts which Sujah Dowlah owed when he died *, and which the son was obliged to pay. It is nothing more than is done frequently by our Courts of Justice, who will compel an avacious mother to divide her deceased husband's property with her children, by an execution on her goods, or imprisonment of her person.

" If there would have been nothing improper in the Nabob's insisting upon his right in the first instance, there could be nothing unnatural in what he did in the second instance; he only exercised a right which he was restrained from using by a foreign influence, which, as I have said, was not very properly exerted.

" But, my Lords, whether our interference in the original dispute between the mother and the son was right or not, it was certain she was entitled to our favour no longer than while she continued to deserve it.

" My Lords, after I had, upon the fullest conviction of the Begum's disaffection to our Government, consented to the resumption of the treasure and jaghires, it is true, I was desirous of having it carried into immediate effect. But the resumption of the jaghires, was first proposed by the Nabob himself to be general; and the point upon which I afterwards pressed him was that of resuming the jaghires from his orderlies—a description of men that were by no means deserving of his countenance or favour. He never was averse to the resumption of the jaghires which were held by his mother; but rather than extend that resumption to his orderlies, though originally proposed by himself, he would have abandoned the plan altogether. This I opposed strenuously, because, having committed myself by the assent I gave, I could not brook the idea of my name being made use of for the purpose of making to unworthy a distinction, which must have affected both the character of myself, and of the English Government.

" Much criminality has been imputed to my neglect of the Company's orders, which enjoined me to make a judicial enquiry into the truth of the Begum's disaffection. My Lords, I positively deny now, as I did at the time in Bengal, that any order was transmitted to us to make any enquiry at all; and if upon any construction of language it had been deemed an order, which it was not by any one Member of the Board, it would have been an act

of infamy in us to have obeyed it in August 1783, when a perfect reconciliation had taken place between the Nabob and his mother.—Such an enquiry would have thrown all the Nabob's dominions into utter confusion.—To have entered into an enquiry, if it had been ordered, which I affirm, and so did Mr. Macpherson, after attentively reading the letter, it was not, would have opened the breach again, and, perhaps, prevented it from ever closing: besides, no arguments upon earth could have convinced the Nabob of the propriety of his restoring the treasure, which ever was, in strict justice and equity, his own, and of which he had been unjustly kept out of possession.

" My Lords, there is a contradiction in the Charges brought against me by my prosecutors, which shew, that their zeal for accusing, transported them beyond the bounds of judgment. I am accused of *wringing* by violence from the Nabob, *his consent* to the resumption of the treasures and of the jaghires in one part of the Article; and in another, of having told my consent to the same measure for ten lacks of rupees to the Nabob.

" My Lords, it is impossible these two propositions can stand together: they contradict each other, and I positively deny them both. I have another observation to make with respect to the resumption of the jaghires. It was stipulated with the Nabob, that an equivalent in money should be annually paid to the Begum, in lieu of the lands of which she was deprived. There was certainly no injustice in this, and the measure was of infinite service to the Nabob's government; for it cut off those mischiefs to which a divided authority is always liable in India.

" I must intreat your Lordships to remember, that at the time I formed an intention to levy a fine upon Cheyt Sing, and when I consented to the resumption of the Begum's treasure, our Government was in the utmost distress for money. I need not in this place enter into a minute detail of the several armies we then had in the field, or of the various demands upon me for immediate supplies of treasure. It is sufficient to say, that the distress was as great as it was possible to be without an actual state of bankruptcy and insolvency. It was very natural, under such circumstances, for me to avail myself of every just means of supply which fortune might throw in my way. It might, and I may say it actually did, incline me to act with greater promptitude and decision than I otherwise should have done. I do not, however, mean to say, that the want of money

* Above half a crore of rupees to the East-India Company, and from nine to fifteen months pay due to an army of one hundred thousand men.

for the public service would have induced me to take the very measures I did: neither is it necessary to say what measures I should have taken, under other circumstances, to procure the speedy payment of the Nabob's debt.— But it would have been highly criminal in me, had I neglected or refused to give my assent to the Nabob's proposition, which was founded in justice and expediency, both for his government and ours, and particularly at a time when treasure was so much wanted for the payment of our armies.

"My Lords, I do most solemnly declare that I acted to the best of my judgment, paying due regard on the one hand to the laws of justice, and on the other to the interest of my employers. To myself individually it was a matter of no moment how the exigencies of the service were supplied, so they were actually and effectually supplied. I could have no undue bias upon my mind; for had I been inclined to act corruptly, I might have found my own account in forbearance, but not in exaction.

"The next Charge, my Lords, is that of the PRESENTS, and it divides itself into two parts, viz. that of the concealed, and that of the avowed Presents.

"In answer to the first, I need only say, that there is no proof before your Lordships of my having accepted any thing more than the common *Zaâfut* *; and even of this there is no other proof than my own admission.— I will not pretend to deny, I never did deny, that I accepted the usual entertainments which were then (for it was previous to the Act of Parliament prohibiting the receipt of presents) usually given to the Visitor, by the Visitor. The Nabob of Bengal received a thousand sicca rupees a day for a similar entertainment, from the Company as often as he visited the Governor in Calcutta. It was usual in the country, and it is impossible for any person to read any oriental history without knowing that the custom has prevailed all over the East, from the most ancient times to the present. My predecessors, as I was informed, had received the same, and it was never held criminal in them. I can most solemnly affirm for myself, and I dare say it might be said for my predecessors also, that I did not add one rupee to my fortune by this allowance; and I am confident I must have charged as large a sum to the Company, if it had not been paid to me according to invariable usage, from the Nizamut. It is impossible there could have been any thing wrong in this transaction: not only was it a matter of public notoriety never denied by me, but the opinion of Counsel was taken by the Com-

pany, as to the propriety of commencing a prosecution against me for it, at a time when the Minister wished to seize any ground for removing me from my station, through the medium of the Court of Directors. The Legislature, since this business was the subject of discussion, has three several times appointed me Governor-General of Bengal, at the recommendation of that Minister. Surely, my Lords, it cannot be the intention of my countrymen, after availing themselves of my services as long as they wanted them, to call me to an account for acts which were publicly known fifteen years ago. If there was any criminality in my receiving the amount of my expenses from the Nabob, it was sufficient to have induced my superiors to have recalled me at the time when they first knew of it: but it was never held up to the world as a heinous offence, till my enemies thought it might be of use to load the scale of criminality.

"Time, my Lords, will not permit me to say any more in exculpation of myself from the remainder of the allegations in this part of the Article, nor is it necessary, since no evidence has been given upon them; but I solemnly declare that each allegation is utterly false, and without a shadow of foundation; I solemnly declare, that I never directly or indirectly received a present from Nundomar, or any other person mentioned in this division of the Charge.

"I must hasten to make my observations on that part of the Charge which is called the avowed presents.

"My Lords, the Managers of the prosecution against me have here prepared a twined sword; for they have endeavoured to shew a double share of criminality in this transaction. First they contend, that I took the presents with a corrupt intention, and would have kept them, had not my fears urged me to a disclosure; and secondly, that the receipt of presents, though for the use of the Company, was a breach of an act of Parliament. In support of the first conclusion, they have nothing but their own suspicions, which they have endeavoured to impress upon the minds of your Lordships, by attempting to shew a variation in the several accounts which I have given respecting the time and manner of receiving them.

"To repel this mode of attack, and to efface the suspicions which they endeavour to raise, I have the oath of Mr. Larkins, a man of the highest character for truth and honour, whose integrity has been repeatedly acknowledged by Earl Cornwallis, the Board of Control, and the Court of Directors, and

whom I believe to be as rigidly honest a man as any in Europe. That there are variations in the different accounts I admit. Many mistakes I have made, which have struck me with as much astonishment as they could possibly strike any of your Lordships. If there had been any act done by me a few years ago, of which I conceived myself warranted to speak with a more perfect recollection than another, it was this. That before I left Calcutta, in July 1781, I had endorsed the bonds of which your Lordships have heard so much, and had left them with Mr. Larkins, to deliver up to the Council, in the event of my death. So desirous was I that the statement of this fact should not rest upon my assertion, that I desired a search might be made at the India House for those bonds, or for copies of them; but none were to be found. I then requested Major Scott to write to Mr. Larkins in my name, and to desire a search to be made for them in Calcutta; and it found, that they might be publicly transmitted to the Company. They were found; they were sent to the Company in 1789 by Earl Cornwallis, at the express requisition of Mr. Larkins, who states in his letter that he made that requisition at my desire, transmitted to him by Major Scott; but to my utter surprize the endorsement of the bonds is not dated until the 29th of May, 1782.

"Alter this fact, my Lords, I am as ready as any man to acknowledge, that I have been imprudent in a degree that merits some of the reflections so illiberally thrown out against me, for having written, as I have too often done, on matters of account, in which I have myself been previously concerned, without having a single paper or document of any sort near me at the time I wrote: for I admit it to have been well observed by the Manager who closed the Article of Presents, that I not only affirmed I had endorsed the bonds in the middle of 1781, but had assigned a reason for so doing; namely, lest I should die during my absence from Calcutta.

"My Lords, after this, I should be almost afraid to hazard a supposition; but as the bonds were left with Mr. Larkins as my attorney, and as Mr. Larkins knew from the first that they were not my property, I conclude that I told him, in 1781, that in the event of my decease he was to deliver them to the Council, which I confounded with the act of having endorsed them.

"But, my Lords, from all the inaccuracies in the accounts before you, I defy any candid man alive to draw this conclusion; that I intended for a moment to apply this money, or a rupee of it, to my own use.

"My Lords, you cannot suspect me of a

fraudulent intention, without looking upon me as the weakest, or upon Mr. Larkins as the most peijured of mankind. Had my construction of the purpose intended by the endorsement of the bonds been invented, for the purpose of deception, I should have stopped when I had assigned it. Instead of this, I fought, and with a diligence which it is not likely that I should have employed to detect myself in a falsehood; first, for authentic copies of the endorsed bonds at the India House, and afterwards for the originals in Calcutta. These being found, proved that I had erred in my account of the transaction; but it also demonstratively proved, that I had given that account, believing it to be true; and presumptively, that my intentions and consequent instructions to Mr. Larkins, were, that the bonds, in the event of my death, should be cancelled by him.

"Time will not allow me to enter into a detail of the various circumstances, and to give my reasons for accepting the presents, farther than to repeat what I have often declared, that the necessities of the Company's service made me joyfully snatch at every just means of relieving them. The Managers have totally failed in their endeavours to shew any corrupt act done by me in favour of the persons from whom these presents were received. The lands at Nudda, Dnagapoor, and Bahar, were let to the best possible advantage, and every means taken to realize their revenues.

"My Lords, it will depend upon your Lordships to give me what degree of credit you please. Whether I intended for a moment to apply any one of the sums received by me to my own use, is a point which can be known only to God and my own conscience. I can solemnly, and with a pure conscience, affirm, that I never did harbour such a thought for an instant: and permit me to add, my Lords, that I was too intent upon the means to be employed for preserving India to Great-Britain, from the hour in which I was informed that France meant to strain every nerve to dispute that empire with us, to bestow a thought upon myself, or my own private fortune.

"With respect to my having violated an Act of Parliament, I do by no means admit that I have done it: that depends, not upon what I have done, but upon what your Lordships may do; that is, upon what construction your Lordships may put upon the disputed clause. I can only say, that I interpreted it to the best of my judgment; and if I have erred, I have done so in common with many others. No person ever suggested to me, that the Act of Parliament deprived the Company of the right of receiving the customary presents,

resents, till I heard that interpretation from some Members of the House of Commons.

" My Lords, I should think it impossible for your Lordships to fix any criminality upon *inevitable* ignorance—I say *inevitable*—for though your Lordships should punish me in the severest manner for this mistake, the example can be of no use to the present generation, nor to posterity: for you can never give a common understanding the powers of diving into the latent meaning of an obscure clause in an Act of Parliament; a clause of which the real but latent meaning is at variance with its grammatical construction.

" But, my Lords, a criminality of this nature must depend as well upon the understanding of the Judges, as of the party accused; for it is possible that his interpretation may be right, and theirs wrong.

" But, my Lords, I have two observations to make, either of which alone would be a full answer to the point of criminality.—First, that there can be no criminality in unavoidable error; for though it is a maxim in law, that ignorance is no excuse, it goes upon this supposition, that information was *possible*; which, in my case, it was not. Secondly, that "*Communis error facit jus*;" for every body that I had occasion to converse or correspond with, seemed all to understand the clause in the same light as I did.

" I must here conclude my comment upon this Article, with again declaring the purity of my intentions; that I accept of the preferment for the good of my employers, and that I employed them in their service at a time when the government of India was distressed beyond the power of detection.

" My Lords, the FOURTH ARTICLE is that of CONTRACTS and ALLOWANCES. It comprehends in a government of thirteen years, five different heads.

" The first is, that I gave Mr. Sullivan a contract for opium, which proved very lucrative to him, and that I gave it without putting it up to the lowest bidder. The facts are true, and it is incumbent upon me to explain every circumstance in the transaction. It was I myself that created that resource of revenue for the Company, and they derived much advantage from it, above half a million sterling in my government.

" The value of the opium contract was first ascertained by auction, and we accepted the proposals of Mr. Griffith and Mr. Wilton, who were the lowest of thirteen bidders.—We gave it to them a second year; and in 1777 this contract was given to a friend of Mr. Francis's, to a Mr. Mackenzie, who held it three years upon the former terms, and then it was given to him for one year longer. It was next given to Mr. Sullivan, who, it

seems, sold the contract at a very advanced rate to Mr. Benn, who afterwards sold it to Mr. Young; but of this tale I was utterly ignorant until after my arrival in England; and Mr. Sullivan was, during the whole period of his contract, the person responsible to the East India Company.

" My Lords, it was impossible for me to know the exact price of opium in the provinces; and it now appears upon evidence, that it was purchased by the second contractors much cheaper than ever it had been by the Patna Council, when they enjoyed it as a perquisite.

" The only question that can be asked here is: Why was not the contract put up to auction according to the Company's order?

" To this, my Lords, I answer, that opium was of that nature, and so liable to frauds and adulteration, that it was detrimental to the interest of the Company to give a contract upon such low terms as to drive the contractor to the necessity of debasing its quality, to preserve himself from loss. It was absolutely necessary in such a case, as it was in many others, to have a man of credit, honour, and property, upon whom we could rely for a just and faithful performance of his engagement.

" My Lords, it was objected that Mr. Sullivan was too young and unexperienced for such an employment; but those who made the objection did not advert to this consideration, that the same objection would lie against Mr. Mackenzie, and it would operate against the appointment of every Member of Council who had of late been sent to India. Surely inexperience in the growth and manufacture of opium, and inexperience in the modes and forms of government, are exposed to hazards of very different magnitude and consequence.

" An objection has been raised against Mr. Sullivan, on account of his being called my assistant. By assistant it was not meant colleague in office, or participant in power; but a more respectable name for a secretary, or writer.

" The next head is, the ARMY-CATTLE CONTRACT. Upon this I am charged with corruption and waste in the rates, and excess in the increased numbers of the cattle.

" The corruption, I conclude, alludes to some inordinate profit in it. To this I answer, that the profit was solemnly attested by Mr. Ferguson, offering to confirm it by oath, that fifteen per cent, per annum was the extent of the profit during the war, and that profit still liable to outstanding debts. This, so far from being an exorbitant profit, amounted to no more than a reasonable agency.

" But I should first have answered the charge of breach of orders in not putting the contract

contract up to auction, and accepting the lowest bidder. The Army Contract had for many successive years been put up to annual sale, until it had been braced down to rates unequal to the service. This came in proof before me: for when the war was spreading, the contractor threw himself upon our equity, and declared he could not perform the service upon the terms he had undertaken. The terms, in consequence of that representation, were revised and amended, the Board having in the year 1778, granted additional allowances, because the former were insufficient. How was it possible to advertise for the lowest bidder, while we were rejecting the lowest bidder, and admitting the expediency of raising his terms? The thing required by the Company was impracticable.—As to the extravagance of the rates, there had been formed with the advice of the best informed and most experienced officers. This point was also brought in proof before me: for when General Goddard's army was to march across India, they had severely quitted our provinces, when the contractor proved himself once more obliged to throw himself upon the justice of the Board, notwithstanding the raised rates, which he found inadequate to the service; he therefore prayed that some other might do the service; and his prayer was granted.

“The excess of numbers is next to be considered. Six thousand seven hundred were appointed for an army of thirty-five thousand men. No detachment marched that did not require a much larger proportion than these numbers bore to the whole army. The army now in the field, of eighteen thousand men, has twenty-three thousand head of cattle. A detachment of two thousand five hundred men marched from Bombay; they had nineteen thousand head. In short, no army ever moved that did not prove the numbers fixed in the new contract to be too small, instead of too great, provided I am right in my opinion, which is, that the army in Bengal, and in Oude, should at all times be in readiness for actual service.

“The next criminal point imputed to me, is that of granting extraordinary allowances to Sir Eyre Coote, and continuing them to him after the Court of Directors had prohibited those allowances.

“My Lords, the Company allowed the Commander in Chief, being in Council, six thousand pounds a year, for his personal trust. Sir John Claverhouse thought it insufficient, and remonstrated, but without success. The probable consequence of his failure was, that he never visited the distant stations of the army, nor took the field in person whilst in India. Sir Eyre Coote, on the contrary,

early declared his intentions to visit the several stations of the army, and the Board fixed certain allowances, which he was to receive while absent from Calcutta. He reviewed the army in Oude, and the Board thought it reasonable that, while Sir Eyre Coote was in the Vizier's dominions, these extra allowances should be delayed by the Vizier, who readily consented to pay them.

“This, my Lords, was not any breach of treaty, for the treaty mentioned in this Article, as having been violated, was the treaty of Lucknow, concluded in 1775, by which the Nabob was to pay two lacs, and sixty thousand rupees a month, for a specific number of troops; but since that period an additional number of troops had been stationed in his own dominions, at his own express requisition; for which he paid an additional, but indefinite sum, annually.

“The Nabob had so high a sense of Sir Eyre Coote's merits and services, that instead of objecting to the proposed allowance, he expressed a wish that it were double that amount. He doubtless never lost sight of the General's absence of his being engaged as much in the defence of his provinces as of those of the Company, and it was upon that principle that he was so forward to continue Sir Eyre Coote's allowances whilst on the coast. It is always the custom for all the Company's military servants to draw double Batta, or extra allowances, when out of the Company's provinces; and it would be strange indeed, that the Commander in Chief should be the only exception.

“My Lords, when Sir Eyre Coote quitted the upper provinces, and went on service to the coast, the same allowances were continued to him by the Company: for it was unreasonable that he should take the field upon the allowances which his predecessor enjoyed for staying in Calcutta.

“My Lords, I so well knew the value of Sir Eyre Coote's presence on the coast, at the time when the army was defeated and dispersed, that there is hardly any thing he could have asked, which I should not have given him.

“My Lords, I must also pray you to advert to the circumstance of General Stibbert, who was an inferior officer, having an allowance of above eighty thousand rupees a year, whilst General Coote was restricted to sixty thousand. Could it be expected that he should have been satisfied with that degrading difference, at the same time that he was upon actual service, and liable to many additional expenses, whilst General Stibbert was at his ease, in cantonments, or garrison?

“My Lords, it was impossible for Sir Eyre Coote's allowance, as settled *ad homo*,

to be sufficient *in the field*, if the same sum was not too much for General Clavering in Calcutta, or if a greater sum was not too large for General Stibbert, *in Cantonments*.

"But, my Lords, it was not a time to cavil with Sir Eyre Coote about field allowances: I never was more convinced of the truth of any hypothesis than of this; namely, that if Sir Eyre Coote had resigned in disgust, which he might have done, the Carnatic had been infallibly lost to this country, *for ever*. I can only say, in addition, that I had no sinister view or motive in what I did; and I should think it my duty to act the same part over again, in like circumstances. Nay, I would have abridged my own allowances to have increased his, if he could have received them, rather than have suffered him to resign in disgust, or to have quitted the army in discontent.

"My Lords, in accounting for the agency given to Mr. Auriol, it will be necessary for a moment again to call your attention to the very alarming and distressed state of our possessions in the Carnatic. Hyder Ally, *victorious in the field*, with his numerous army, which had cut off a large detachment of our troops, and had driven the main body back with considerable loss to Madras, was laying siege to Arcot, which inevitably fell soon after, for want of succours. His numerous followers were desolating and laying waste the whole face of the country, by burning the villages, and destroying the cultivation, up to the very walls of Madras.

"In this desperate situation did the President and Council write to us for every possible aid of troops, money, and provisions.—Sir Eyre Coote, with a reinforcement of Europeans and treasure, by the celerity of his departure and arrival, though in the worst season of the year, gave a fortunate turn to the state of our affairs upon the coast. We at the same time entered into a contract to send them the quantity of rice which they had applied for; but this was soon exhausted.—They applied for more, and Mr. Auriol, our Secretary, delivered in proposals to send it on the same terms as the last contract.

"My Lords, I then perceived that the Presidency of Madras, as well as the army, must depend entirely for their subsistence and support upon Bengal. Another contract would have been but a feeble resource. The exports of individuals could never be relied upon, for so great and so serious an object.

"My Lords, contracts might have failed. One contract, and one only, was entered into during the service of the agency, and that *did fail*. The contractor prayed to be released from a great part of his contract, and was released, although the rate of his contract was

higher than the average price of all the agent's supplies, with his commission included.—Nay, contracts must have failed for want of resources in the Treasury to fulfil the stipulations for the public. The agent employed his own credit.

"My Lords, the French fleet was for near two whole seasons in complete and undisturbed possession of the Bay of Bengal; ours being in harbour at Bombay. Insurance was not always to be procured, and individuals would not trust their property but in the hopes of large profits to compensate for their risks.

"My Lords, the public had so great a stake to save, that it answered to them to send rice at all risks; and the event has proved, that it answered well; as the agent, though his commission was liberal, supplied the settlement of Madras with rice, both better in quality, and twenty per cent cheaper, than the former contract. He supplied them with it at one half the price at which individuals, landing it there, were compelled by the government of Madras to sell it to them in exchange for bills upon Bengal; and the average rate of all his supplies, with commission included, was less than the rates of ten out of eleven proposals received for the contract, after the agency was abolished; and as low as the very lowest proposal. The commission, I admit, was liberal, though not more than had been usual for offices of supply in Bengal. It was originally *fifteen never twenty-five* per cent, (as erroneously stated by the Manager who summed up the Charges) but afterwards considerably reduced; and there were many charges to be defrayed out of it.

"My Lords, I submit, that an agency was the only effectual mode of insuring a constant and sufficient supply for this important service; and I maintain, that it has proved to be the most frugal mode to the Company. The confidence which the Board had in Mr. Auriol's diligence and integrity, confirmed by many years experience of his conduct, pointed him out as a proper person for this service, and he was accepted.

"The mode of delivering accounts upon honour was not a new mode in the Company's service, (and it is practised at the present moment in Bengal) nor was it by any means intended to preclude the examination of vouchers, where vouchers were required, or could be produced; but meant to strengthen the obligation on the party accounting, where vouchers either could not be had, or were too numerous as to make it almost impracticable to examine them with the accounts. I understood that vouchers never were refused by the agent.

"But as so much has been said on this subject,

subject, I hope I may be permitted to remark, without any imputed disrespect to your Lordships, whose honour no man can more highly revere than I do, that I think it is impossible you can conceive the term has been prostituted or misapplied on these occasions.—Every merchant depends on the honour, credit, good faith, or honesty (call it what you will) of his reputed dealings; and were this dependence banished from the community, I fear we should have very little security for any transactions in our intercourse with mankind.

“My Lords, I am accused of granting an agency to Mr. Belli, who is stated to be one of my own dependants, with a wasteful and improvident commission. It will be found that this business did not originate with me. The necessity for laying up a dépôt of provisions and stores in the garrison of Fort William, that we might be prepared for a siege, was, as I recollect, strongly urged both by General Clavering and Mr. Francis; and a degree of neglect imputed to me for not having provided against such an emergency.—The measure was afterwards, on a minute which I delivered, considered in Council, and upon the resolution of the Board, that such a dépôt should be formed, the opinion of merchants was required upon the quantum of commission adequate to an agent for his trouble, charges, and loss, by wastage and decay in keeping up the store from year to year in constant good condition. The merchants declared that twenty per cent. was the *least* compensation that could be allowed. I proposed Mr. Belli for the agency, and upon examining the accounts of a former service of this kind executed in the government of my predecessor, Mr. Carter, which were called for to assist us in our determination, I found that the Company had sustained a real loss upon the sale of those stores, at the end of two years, of ninety per cent. No agent would undertake a service by which he was to be a loser: his profits ought to be proportioned to the nature and importance of the thing required. He might be a loser by accepting the *least possible commission*, or, which is worse, a failure of his duty might be dangerous to the safety of our possessions. I trust your Lordships will not think the commission of thirty per cent. per annum, which I proposed for the agent to answer all charges and losses by wastage and decay in the changing of stores, from time to time as they required it, was an immoderate allowance for the due performance of so important a duty.—That I was not improvident in granting it, will appear from Mr. Belli's own accounts, delivered in evidence to your Lordships. There has been some doubt thrown

upon them by the Manager who summed up this Charge, but Mr. Belli is in England, and can verify them. I shall close this subject with remarking, that since my return to England both the Court of Directors and my Successor in the Government have expressed their strongest approbation of his integrity in this business.

“I will not detain your Lordships by advertising, for any length, to the story told by the Manager who opened the general Charges relative to the horrid Cruelties practised on the Natives of Dhee Jumla by Deby Sing.—It will be sufficient to say, that the Manager never ventured to introduce this story in the form of a Charge, though pressed and urged to do so, in the strongest possible terms, both in and out of Parliament.—Mr. Paterson, on whose authority he relied for the truth of his assertions, and with whom, he said, he wished to go down to posterity, has had the generosity to write to my Attorney in Calcutta for my information, “That he felt the sincerest concern to find his reports turned to my disadvantage, as I acted as might be expected from a man of humanity throughout all the transactions in which Deby Sing was concerned.”—Had the cruelties which the Manager stated been really misstated, it was not possible, as he very well knew at the time, to impute them, even by any kind of forced construction, to me.—My Lords, it is a fact that I was the first person to give Mr. Paterson an ill opinion of Deby Sing, whose conduct upon former occasions had left an unfavourable, and perhaps an unjust, impression upon my mind. In employing Deby Sing I certainly yielded up my opinion to Mr. Anderson and Mr. Shore, who had better opportunities of knowing how man I could have. In the course of the inquiry into his conduct he received neither favour nor countenance from me, nor from any Member of the Board. That inquiry was carried on principally when I was at Lucknow, and was not completed during my Government, though it was commenced and continued with every possible solemnity, and with the sincerest desire, on my part, and on the part of my colleagues, to do strict and impartial justice. The result I have read in England; and it certainly appears, that though the man was not entirely innocent, the extent of his guilt bore no sort of proportion to the magnitude of the charges against him. In particular, it is proved that the most horrible of those *barbaric* acts, so artfully detailed, and with such effect, in this place, *never were committed at all*.

“Here I leave the subject, convinced that every one of your Lordships must feel for the unparalleled injustice that was done to me by the

the introduction and propagation of *that atrocious calumny*.

"My Lords, I will not now detain your Lordships by offering many remarks upon the gross injustice that I also sustained in having been compelled to appear at your Lordships' bar to justify acts which have received the repeated approbation of the King's Ministers, and virtually of the late House of Commons. My Lords, it is perfectly true, that the Articles to which I allude are not insisted upon, or in other words, they are abandoned. But I feel the injury most sensibly, and the expence of defending myself against them has been intolerable.

"The King's Ministers, as Members of Parliament, voted to impeach me for accepting a delegation to Oude, and for forming an arrangement with the Nabob Vizier which subsists at the present moment."

Mr. Fox. "My Lords, I am sure I should be very unwilling to do any thing to interrupt a person in the situation of the defendant; but I think you cannot permit him to state how a Member of Parliament voted, because the defendant cannot possibly know the fact."

Lord Kenyon. "The person accused at the bar will certainly meet the wishes of this House, and of the Managers also, in replying to the allegations that have been opened against him, by avoiding, if he can, the use of names; though it is certainly competent to him, if he thinks it for his advantage, to point out any inconsistency or injustice in the conduct of his prosecutors."

Mr. Hastings. "My Lords, I beseech you to recollect the very great tenderness I have used when I have been speaking of the most atrocious actions that have been committed against me: it is not my intention to accuse any body; but if any fact necessary to my defence should, in stating that defence, necessarily involve the crimination of others, I do not mean to criminate them—but the consequence is inevitable—it is not my fault."

Mr. Fox. "My Lords, the nature of my objection is this:—I do not object to any language the prisoner may use, of any kind whatever, in his situation; but having stated that the King's Ministers have so voted in the House of Commons, I think that is a fact that he cannot bring evidence of, and consequently it is impossible for us to answer in reply. I think it is impossible he can know how a Minister has voted in the House of Commons."

Mr. Hastings. "My Lords, may I, without disrespect to the Managers, say, that I

use only a licence for which I have their example: they have done so on many occasions. I never interrupted them; nor did my Counsel interrupt them, when they were making their long speeches against me. I throw myself on your Lordships' protection, and I beseech you to protect me against this violence."

Mr. Burke. "My Lords, we offer no violence: the Managers of the House of Commons offer no violence to the prisoner at your Lordships' bar."

Lord Kenyon. "If the defendant is guilty of any impropriety, he may correct himself."

Mr. Law. "I wish to recal to the Hon. Managers' consideration—"

Lords. "Go on, go on."

Mr. Hastings. "My Lords, I really lay under a great disadvantage. If what I have said is wrong, punish me for it; but I beseech you do not let me be interrupted. I cannot speak from the sudden impulse of my own mind—I am not accustomed to it. I have written down what I wish to read; and I call God to witness that I did it with a due regard to the reverence due to this honourable Court."

Lords. "Go on, go on."

Mr. Hastings then proceeded as follows:

"I say, my Lords, in four separate letters the King's Ministers approved of what I had done, though they voted to impeach me for doing it. They ordered my arrangement to be invariably adhered to; they approved, as they declare themselves, of the principles on which it was formed; and the Minister for India has taken credit every year for the subsidy procured by that arrangement, which is paid monthly with the punctuality of a Bank dividend. They voted also to impeach me for having ruined, oppressed, and destroyed the natives of Bengal, although in the first stage of the business they opposed the Revenue Article*, which contains these allegations, and although the falsehood of the Charge must be apparent to every man who is not prepared to prove that the Minister for India has annually presented false accounts to the House of Commons. Both cannot be true:

"In the few words that I had the honour to address your Lordships on Monday, I assured you that I should never make a defence for my conduct on the plea of necessity, although the Managers for the Commons have taken so much pains to refute that plea.

"According to my construction of the law, it was not criminal to receive presents

* This Revenue Charge was moved in the late Parliament by Mr. Francis, and very strongly opposed by Mr. Pitt; but the Minister and the whole Board of Controul were left in a minority, being beat by fifteen voices: when it was framed into an Article, the Minister and the Board of Controul voted it to contain high crimes and misdemeanors.

with a solemn determination in my own mind to appropriate every rupee so received to the public service, and to that public service was every rupee applied with the utmost fidelity. I thought it perfectly consistent with justice to levy a fine of forty or fifty lacks of rupees from Cheyt Sing for his contumacy. I conceived it strictly justifiable, upon the information that I had received of the Begum's disaffection to consent to the resumption of her jaghires, and of the treasure in her possession. That I had information of her disaffection before me is clearly in evidence; and if I could have been favoured with a few days attention in this place, I could have established that fact by irrefragable proof.

"But, my Lords, does it cease to be material to establish the necessity, or is it to be said that the necessity did not exist at all, because I am of opinion that I broke no law in accepting presents, and did not degrade my own character, nor the British name, by my conduct to Cheyt Sing or the Begum?"

"My opinion of our necessities may be collected from the following passage in my Narrative of the Insurrection in Benares:

"I left Calcutta impressed with the belief that extraordinary means were necessary, and those exerted with a strong hand, to preserve the Company's interests from sinking under the accumulated weights that oppressed them. I saw a political necessity for curbing the overgrown power of a great member of their dominion, and making it contribute to the relief of their pressing exigencies. If I erred, my error was prompted by an excess of zeal for their interests operating with too strong a bias upon my judgment."

"Of what nature those necessities were I will now state; and I believe the proofs of them were upon the table of the House of Commons when those necessities were denied to have had existence, and when my Impeachment was voted.

"I left Calcutta in July, and signed the treaty of Chunar on the 18th of September 1781.

"We had at that period borrowed as much money upon bonds as we could borrow, for

the bonds bore a considerable discount.—Every letter received from Madras between November 1780 and September 1781 contained the most pressing applications for money and provisions. These letters are upon record, although not before your Lordships; and I am in possession of private letters written to me by the Governor of Madras in that period, in duplicate and triplicate, most earnestly pressing me to save them from sinking, by sending them ample supplies of money and provisions. Sir Eyre Coote depended upon me for seven lacks of rupees a month, for the pay of the armies in the Carnatic. The most pressing applications for money were received from Bombay, and from General Goddard, who commanded the army in Guzerat; and very heavy bills were drawn upon the Government of Bengal in the first months of the year 1781. The troops in Oude and in Bengal were many months in arrear. Colonel Muir's army, in the province of Malwa, and Major Popham's, at Benares, were considerably in arrears. A French fleet had appeared off Fort St. George in February 1781; was expected to return in the ensuing season, and did actually come upon the coast of Coromandel in April 1782.

"Sir John Macpherfon, who landed in Calcutta in October 1781, has truly described our situation at that moment:

"An empty treasury, and every resource for raising money so completely exhausted, that it was with the utmost difficulty the Governor could raise a loan for a remittance of eight or ten lacks, which he had solemnly pledged himself to make to Sir Eyre Coote, whom he had left at Madras in September in the greatest distress for money."

"It is in evidence that Colonel Muir, after the separate peace which I concluded with Madajee Scindia, could not recross the Jumna until he received a supply from Fyzabad in February 1782*.

"The fact, my Lords, is known and acknowledged by every man who served during the late war in India, that our possessions there were preserved only by the extraordinary resources procured by me in consequence of the treaty of Chunar †.

"Such

* Page 941 of the printed evidence.

† Extracts from Sir John Macpherfon's Letter to the Court of Directors, dated 30th March 1783.

"Of the general distress of your affairs in all your Presidencies, in the latter end of August 1781, when I arrived at Madras, you have long since had authentic accounts, but of the danger to which the very existence of the Company was then exposed you can have no adequate idea. In the Carnatic, your principal settlement, and your main army under Sir Eyre Coote, were surrounded by the army of Hyder, who had indeed been defeated on the 1st of July 1781, but who, from that check, seemed only to have become more guarded, and determined in his purpose. Neither your army, nor even Fort St. George itself, had at that time above a few days provisions in store, nor could there be any prospect of supply from the country."

"At

"Such was the distress of the troops in Oude, and in the Mahratta country, that the officers sold their plate for the temporary relief of their sepoy, as they did also upon the coast.

"But if with the sum of one hundred and thirty eight lacks of rupees, which I procured in Oude from September 1781 to September 1782, and a very large sum received in the next year, we found it difficult to maintain our armies, what must have been the consequence, had I not formed such a beneficial arrangement with the Nabob Vizier? And your Lordships will believe that I felt the full force of our situation when I concluded the treaty of Chunar. I had not then, I have not now, the smallest doubt that the Begum had afforded military assistance to Cheyt Sing. Circumstances have been brought to my recollection since the Trial commenced which had escaped me before; and these are confirmed to me by evidence which I am sure your Lordships would deem decisive upon the subject, had I been allowed a few days to lay it before you.

"My Lords, you are now better enabled to judge of the difficulties which I had to encounter in the last war, than I did suppose it within possibility for your Lordships to be when this Trial commenced.

"Your Lordships will feel for the wants under which I laboured when I had to contend, at one time, with *all* the Powers of India, combined with the French and the Dutch, because your Lordships have proofs before you in the Council Chamber of Parliament that the resources of India are now utterly inadequate to the support of a war against *one* native Power who is unassisted by any European ally. We are in alliance with all the Mahratta chiefs, and with the Soobadar of Deccan, who were in the former war confederated against us. The Government of Bengal, when this war commenced, was free from foreign and domestic embarrassments.

The Nabob Vizier had completely liquidated his debt, and his subsidy was paid with the utmost punctuality. Benares afforded the full revenue which I am impeached for having procured. The salt, the opium, and the land revenues of Bengal, added to the subsidy from Oude and the Benares collections, produced annually to the Company nearly five millions four hundred thousand pounds.

"But, my Lords, so inadequate have these resources proved, with the addition of the revenues of Fort St. George and Bombay, that since the commencement of the present war a very considerable sum in specie has been transmitted from England to India; money has been borrowed to the utmost extent of their credit at Bengal, Fort St. George, and Bombay, at a high interest; and Hyder Beg Khan, whom your Lordships have heard of so often, has assisted Lord Cornwallis with a loan of twenty-two lacks of rupees.—I mention these circumstances to your Lordships to prove that the resources of India cannot, in time of war, meet the expenses of India.

"Your Lordships know that I could not, and Lord Cornwallis cannot do, *what every Minister of England has done since the Revolution*—I could not borrow to the utmost extent of my wants during the late war, and tax posterity to pay the interest of my loans. The resources to be obtained by loans, those excepted for which bills upon the Company were granted, failed early in my administration, and will fail much earlier in Lord Cornwallis's, not from want of confidence in that Noble Lord, but because the surplus resources of Bengal have not been employed in liquidating the debt contracted in Bengal during the late war.

"Allow me, my Lords, to call again to your Lordships' recollection the many and the unprecedented difficulties with which I had to contend during the late war in India. Every measure of my administration was calculated to relieve the public exigencies; nor

"*At Bengal, on which your other Presidencies depended almost entirely for supplies, your treasury was drained, and every effort of raising money by loan and by partial remittances had been tried.*

"On the subject of the supplies which have been sent from hence from the period of my arrival (eleven days after the treaty of Chunar was signed) for the support of the war in your other Presidencies, I have the honour of transmitting you the accompanying official account, signed by your Accountant-General. From this account you will please to observe, that the amount remitted, and actually paid, from the 30th September 1781, to the 1st March 1783, is two crores, fifty-eight lacks, one thousand three hundred and fifty-six rupees, besides the treasure and stores which were sent some days since with Sir Eyre Coote to the coast, and bills accepted by this Government, and under payment, making in all a sum little short of *three millions sterling*."

* In the year 1782 the Governor-General and Council drew bills upon the Company to the amount of that year's investment. In September 1783, the Directors wrote to Bengal, expressing their disapprobation of the measure, and telling their servants that they *must fall upon some other mode of supplying the public exigencies*.

can any man in England point out other means than those which I employed, by which the public necessities could have been relieved; yet I have been four years impeached before your Lordships for the several acts by which I preserved what the India Minister has called, in the House of Commons, *the brightest jewel in the British Crown!*

"I have now gone through the examination both of the general and specific crimes which have been laid to my charge. I have endeavoured to develop the great and commanding points of every distinct Article, from those which are either immaterial in themselves, or which depended for their rectitude, or criminality, on the former.

"In this work I have in effect undertaken to reduce the compiled mass of seven folio volumes into the compass of a few pages, a labour requiring months of leisure to execute it as it ought to be, and a length of time proportioned, not to the extent of the work, but to the degree of its abbreviation.

"I have urged all that in this view of the subject was, in my judgment and recollection, necessary to the elucidation of it: but it is hardly possible that something may not have been omitted, which would have rendered it more complete; something the want of which may yet leave doubts on your Lordships' minds respecting parts of my conduct detached from the general tenor of it. For this, and for other deficiencies in this address, I have to beg your Lordships' candour, and to plead the disadvantage of the restricted and inadequate time, and the infirm state of body, under which I have arranged it.

"I must reluctantly press upon your Lordships' time, and shall hasten to conclude with a few general observations upon the nature of this Impeachment, as it relates to those principles which constitute the moral qualities and characters of all mankind.

"If the tenor of a man's life has been invariably marked with a disposition to guilt, it will be a strong presumption against him, in any alleged instance, that he was guilty.

"If, on the contrary, the whole tenor of a man's life was such as to have obtained for him the universal good will of all with whom he had any intercourse in the interested concerns of life, the presumption will be as well grounded, that he was innocent of any particular wrong imputed to him, especially if those who are the alleged sufferers by that wrong, make no complaint against him.

"But what shall be said of complaints brought against a man, who was in trust for the interests of the greatest commercial body in the world; who employed and directed the services of thousands of his fellow citizens at official departments, and in extensive

military operations; who connected Princes and States by alliances with his parent kingdoms, and on whose rule the peace and happiness of many millions depended; I say, what shall be said of complaints brought against such a man, in the names and on the behalf of all those descriptions of men, *who all unite their suffrages in his favour?* Such complaints, with such a presumption against the probability of their truth, may have existed, but the history of mankind cannot produce an instance of their being received on such a foundation, until the late and present House of Commons *thought fit to create one in my Impeachment.*

"Permit me, my Lords, to retrace the principal events in the public life of that man, whom the Commons have thus brought, *and have kept so long, in Trial before you.* With the year 1750, I entered the service of the East-India Company, and from that service I have derived all my official habits, and all the knowledge which I possess, and all the principles which were to regulate my conduct in it. If those principles were wrong, or if in the observance of them I have erred, great allowance ought to be made for human infirmity, where I possessed such inadequate means of obtaining a better guidance. Yet the precautions which I invariably used, render even this plea unnecessary by the references which I made to the Court of Directors, my immediate masters, of every measure which I have undertaken, with its motives and objects minutely explained and detailed.

"For the truth of this assertion I might safely appeal to them, and I am sure that they would attest it; and the volumes both of consultations and letters in their possession, prove that my share of the compilation exceeds, beyond all degrees of comparison, that of the most laborious of my predecessors, not excepting even my ever-honoured friend, Mr. Henry Vansittart.

"Nor was it to them only that I was thus communicative. When Great-Britain was involved in a complicated war, and their Governments in India had, besides European enemies, a confederacy of all the principal Powers of India aimed against them, I gave the then Minister of this kingdom constant information of all the measures which I had taken, in conjunction with my colleagues in the Government, to repel the dangers which pressed us; the motives and objects of those measures; the consequences expected from them; and the measures I had further in contemplation; and it has since afforded me more than common pleasure to reflect, that every successive letter verified the expectations and the promises of the preceding.

"If I had given evidence in my defence, I should have called upon the Noble Lord to produce

produce all my letters in his possession.— Those and my letters to the Court of Directors, but my letters to Lord North in a most striking manner, would have shewn how careful I was to expose all my actions to their knowledge, and consequently how little apprehension I could have felt that there was any thing in them that could be deemed reprehensible. In all instances which might have been deemed of a doubtful nature, these communications were virtual references for their sanction, or for their future prohibition. If I received neither, their silence was a confirmation, and had more than the effect of an order, since, with their tacit approbation of them, I had imposed upon myself the prior obligation of my own conception of their propriety. Were I, therefore, for a moment, to suppose that the acts with which I am charged, and which I so communicated (for I communicated all to the Court of Directors) were intrinsically wrong, yet from such proofs it is evident that I thought them right; and therefore the writ that could be said of them, as they could affect me, is, that they were errors of judgment; and even for these in all instances where they were repeated, or the causes of subsequent acts, deriving the same quality from them, the error, and every blame which could attach to them, was theirs, *who might have corrected them, and did not.*

“ In the year 1768 I was appointed by the Court of Directors of the East India Company, a Member of the Council, and eventually to succeed to the Government of Madras.

“ In the year 1771, when the affairs of their principal establishment were supposed to be on the decline, and to require an unusual exertion of abilities and integrity to retrieve them, the Court of Directors made choice of me for that trust: and I was by their order removed from the Council of Fort St. George, to the Government of Fort William in Bengal, and to the principal direction of all the civil, military, commercial, and political affairs, dependent on it.

“ In the year 1773 I was appointed by an Act of Parliament Governor-General of Bengal for five years.

“ In the year 1778 I was re-appointed by the same authority for one; in 1779 for another; in 1781 for ten years; and in 1784 I was virtually confirmed by that Act which forms the present Government for India.

“ In this long period of thirteen years, and under so many successive appointments, I beg leave to call to the recollection of your Lordships, that whilst Great-Britain lost one half of its empire, and doubled its public debt, that Government over which I presided, was not only preserved entire, but increased in population, wealth, agriculture, and commerce; and although your Lordships have been told by the House of Commons, that my measures have disgraced and degraded the British character in India, I appeal to the general sense of mankind, to confirm what I am now going to say, that the British name and character never stood higher, or were more respected in India, than when I left it.

“ So much may I say for the general effect of my Government. For the specific Acts which have contributed to produce it, it would require volumes to recite them.— Shortly permit me to enumerate the principal heads which comprehend them.

“ Every division of official business, and every department of Government, which now exists in Bengal, with only such exceptions as have been occasioned by the changes of authority enacted from home, are of my formation.

“ The establishment formed for the administration of the revenue, the institution of the courts of civil and criminal justice in the province of Bengal, and its immediate dependencies; the form of Government established for the province of Benares, with all its dependent branches of revenue, commerce, judicature, and military defence; the arrangements created for the subsidy and defence of the province of Oude, every other political connection and alliance of the Government of Bengal, were created by me, and subsist unchanged, or if changed, changed only, to use the words of my noble and virtuous successor, applied to the principles of my arrangements in the province of Oude, “ with a view to strengthen their principles, and render them permanent.”

“ Two great sources of revenue, opium and salt, *were of my creation*; the first, which I am accused for not having made more productive, amounts at this time yearly to the nett income of 120,000*l.* the last (and all my colleagues in the Council refused to share with me in the responsibility attendant upon a new system) to the yearly nett income of above 800,000*l.**

“ To sum up all; I maintained the provinces

* The history of the opium revenue is in evidence: Of the salt, the Directors wrote to Bengal the 21st of September 1785, in the following terms:

“ When we consider the alarming decline of the salt revenue in the year 1780, and for which no remedy seemed for some time to present itself, we acknowledge ourselves indebted to the abilities and zeal of Mr. Hastings, for a plan suggested and completed by him, “ which

vinces of my immediate administration in a state of peace, plenty, and security, when every other member of the British empire was involved in external wars, or civil tumult.

"In a dreadful season of famine, which visited all the neighbouring States of India, during three successive years, I repressed it in its approach to the countries of the British dominion, and by timely and continued regulations, prevented its return; an act little known in England, because it wanted the positive effects which alone could give it a visible communication; but proved by the grateful acknowledgments of those who would have been the only sufferers by such a

scourge, who, remembering the effects of a former infliction of this dreadful calamity*, have made their sense of the obligation which they owe to me for this blessing, a very principal subject of many of the testimonies transmitted by the inhabitants of Bengal, Bahar, and Benares.

"And lastly, I raised the collective annual income of the Company's possessions under my administration from three to five millions sterling, not of temporary and forced exaction, but of an easy, continued, and still-existing production, the surest evidence of a good Government—improving agriculture, and increased population†.

"To

"which not only retrieved that branch of trade and revenue, but produced an effective benefit to the Company, beyond our most sanguine expectation. It is with pleasure also that we remark the industry and talents displayed by Mr. Henry Vansittart, the Comptroller, in carrying the plan into execution.

"Approved by the Board, and signed by

"HENRY DUNDAS,
"W. W. GRENVILLE,
"MULGRAVE,
"WALSINGHAM."

* In 1770.

† When so powerful a body as the House of Commons commit their name and character, by the assertion of a fact which turns out upon examination not to have the slightest foundation in truth, the respect which every British subject owes to that branch of the Legislature, will naturally induce him to produce every possible species of evidence that may tend to justify him, in an instance in which he ventures to differ from so great an authority.

That Mr. Hastings raised the resources of his Government from three millions a-year to five, is in evidence before the House of Commons, and that evidence was entered upon the Journals on the motion of Mr. Dundas, the India Minister.

But lest it should be said that Mr. Hastings profusely lavished the revenues that he had created, we shall here insert an exact statement of the actual profits annually arising to the East-India Company from their Bengal possessions*, from the time they acquired those possessions in 1765, down to the year 1791. The documents are all before the House of Commons, except for two years, 1779-80 and 1780-81; and we believe that the accounts for those two years are very accurate, though we do not give them with the same confidence that we do the other years' accounts, which are all of them upon the Journals of the House of Commons.

£.			£.		
1765-6	471,067	} Lord Clive's Government.	1778 9	1,040,437	} Mr. Hastings's Government.
1766-7	1,253,501		1779 80	377,677	
1767-8	871,622		1780-1	354,454	
1768 9	829,622	} Mr. Verelst's Government.	1781-2	275,782	} Sir J. Macpherson's Government.
1769-70	336,812		1782-3	1,029,622	
1770-1	275,088		1783-4	1,163,224	
1771-2	768,371	} Mr. Cartier's Government.	1784 5	1,128,612	} Earl Cornwallis's Government.
1772 3	567,866		1785-6	1,038,987	
1773-4	1,031,806		1786-7	1,660,868	
1774-5	1,625,336	} Mr. Hastings's Government.	1787-8	2,233,943	} By Estimate.
1775 6	1,871,021		1788-9	2,767,369	
1776 7	1,767,491		1789-90	2,807,444	
1777-8	1,200,623		1790-1	2,295,811	

From this account it appears that the actual net profit received by the East-India Company, during Mr. Hastings's Government, was above twelve millions eight hundred thousand pounds, although, from the year 1777-8, to the close of his administration in 1794-5, the Bengal army was upon a war establishment; and in that period two considerable detachments were serving in the Carnatic and the West of India, and a third for some time in the province of Malwa.—The restoration of peace, and the return of these armies, enabled the Bengal Government to reduce their military expences above a million sterling a-year. This reduction, with the progressive

" To the Commons of England, in whose name I am arraigned for *desolating the provinces of their dominion in India*, I dare to reply, that they are, and their representatives annually persist in telling them so, the most flourishing of all the States of India—It was I who made them so.

" The valour of others acquired, I enlarged, and gave shape and consistency to the dominion which you hold there; I preserved it: I sent forth its armies with an effectual, but economical hand, through unknown and hostile regions, to the support of your other possessions; to the retrieval of one from degradation and dishonour; and of the other, from utter loss and subjection. I maintained the wars which were of your firmation, or that of others, *not of mine*. I won one member * of the great Indian Confederacy from it by an act of seasonable restitution; wit another † I maintained a secret intercourse, and converted him into a friend; a third ‡ I drew off by diversion and negotiation, and employed him as the instrument of peace.—When you cried out for peace, and your cries were heard by those who were the object of it, I resisted this, and every other species of counteraction, by rising in my demands; and accomplished a peace, and I hope everlasting one, with one great State ||; and I at least afforded the efficient means by which a peace, if not so durable, more seasonable at least, was accomplished with another §.

" I gave you *all*, and you have rewarded me with *confiscation, disgrace, and a life of impeachment*.

" One word more, my Lords, and I have done. It has been the fashion in the course of this Trial, sometimes to represent the natives of India as the most virtuous, and sometimes as the most profligate of mankind. I attest their virtue, and offer this unanswerable proof of it:

" When I was arraigned before your Lordships in the names of the Commons of Great-Britain, for sacrificing their honour by acts of injustice, oppression, cruelty, and rapacity, committed upon the Princes, Nobles, and Commonalty, of Hindostan, the natives of India of all ranks came forward unsolicited to clear my reputation from the obloquy with which it was loaded. They manifested a generosity, of which we have no example in the European world: their conduct was the effect of their sense of gratitude for the benefits they had received during my administration.

" My Lords, I wish I had received the same justice from my country.

" The testimonials of the natives of India were sent to the Government of Bengal, authenticated by the various official channels through which they passed; by the Government of Bengal to the Court of Directors, with their translations; and copies of the latter by the Court of Directors to the late House of Commons, on whose journals they still remain.

" To these let me add the address of my fellow citizens inhabiting the town of Calcutta, presented on the day on which I left them to return to England, and of the British officers in India, written and sent after me, many months after I had left it. Authenticated copies of these too were read in the House of Commons, and while I have life, I will gratefully preserve the originals, as the most honourable testimony of a life well spent, and of a trust faithfully discharged; because bestowed by those who had the nearest, and consequently the surest means of knowing it.

" My Lords, I am aware of the promptitude with which my accusers will seize on this exposition of my merits and services, to constitute them (to use the phrase which they have already applied to them) a set-off against confessed offences.

" I disclaim and protest against this use of them. If I am guilty of the offences laid to my charge, let me be convicted, and let my punishment be such as those offences shall deserve.

" No, my Lords; I have troubled you with this long recital, not as an extenuation of the crimes which have been imputed to me, but as an argument of the impossibility of my having committed them.

" My Lords, when I solicited your indulgence for this day's hearing, I did it under a belief that there would be ample time in this session for your Lordships to give judgment: without that belief I should not have urged the request which I made on Monday last.—I assure your Lordships, that there is no object upon earth so near my heart as that of an immediate determination of this tedious prosecution. I am so confident of my own innocence, and have such perfect reliance upon the honour of your Lordships, that I am not afraid to submit to judgment upon the evidence which has been adduced on the part of the prosecution.

" My Lords, it is impossible for me to know the limits of the present Session of Par-

progressive improvement of the salt revenue, accounts for the considerable increase in the net annual profits of the Company in Bengal since the resignation of Mr. Hastings.

* The Nizam. † Moodajee Buxia. ‡ Madajee Scindia. || The Mahrattas. § Tippoo Sultan.

liament:

Kiment: and under this uncertainty, I can only say, that if there be sufficient time for your Lordships to come to a final judgment before the prorogation of it, then I most cheerfully and willingly rest the cause where it now stands.

" I am above all things desirous that your Lordships should come to an immediate decision upon the evidence before you. But if the shortness of time should prevent your Lordships from complying with this my earnest desire, and the Trial must of necessity,

and to my unspeakable sorrow, be prolonged to another Session, then, my Lords, I trust you will not consider me, by any thing I have said, as precluded from adopting such means of defence as my Counsel may judge most advisable for my interest."

Mr. Hastings having concluded his defence, the Lords adjourned to their own Chamber, and resolved to proceed further in the Trial on the *first Tuesday in the next Session of Parliament*.

END OF THE FOURTH PART.

THE T R I A L O F WARREN HASTINGS, Esq. &c.

P A R T V.

TUESDAY, February 14, 1792.

SEVENTY-THIRD DAY *.

AFTER the usual ceremony of the Peers taking their respective seats, and the Prisoner being brought to the bar in custody of the Usher of the Black Rod,

The Lord Chancellor informed the Managers of the Impeachment, that their Lordships were ready to hear further evidence, and called upon the prisoner for his defence.

Mr. Law, leading Counsel for the defendant, in a speech which lasted from one o'clock until half past four, partly opened his client's case.

The exordium did credit to his abilities.

Their Lordships, he said, were now entering upon the fifth year of a trial, for which the history of this or any other country furnished nothing like a parallel; and it at length became his duty to occupy somewhat longer the harassed, and nearly exhausted, attention of their Lordships, and exercise reluctantly the expiring patience of his client. Mr. Hastings, by the bounteous permission of that Providence which disposes of all things, with a constitution weakened by great and vigorous exertions in the service of his country, and impaired by the unwholesome influence of a remote climate—suffering from year to year the wounds which must pierce a manly and noble mind—the passive listener to calumny and insult—thirsting with an honourable ardour for the public approbation, which illustrious talents and services are ever entitled to, while malignity and prejudice are going on to degrade him, and blacken his fair reputation to the eyes of his country—

subdued by the painful progress of a trial protracted to a length unexperienced before by any British subject, and of which there was no precedent in any former, and he hoped never would be in any future period of the British history—under all these accumulated hardships, Mr. Hastings was alive this day, and kneeling at the Bar of their Lordships, to implore the protection, as he was sure of the justice, of that august Tribunal.

But although his client was thus confident in his consciousness of his own innocence, his Advocates were oppressed with fears to which he was a stranger. Sensible of the great weight of authority and abilities with which they had to contend, equally sensible of their own great inferiority, their spirits sunk under their apprehensions of the great variety of matter, foreign indeed to the charge, but peculiarly calculated to affect opinions which they must endeavour to repel. All the arts that move men's minds had been employed with the greatest power and effect. Crimes and cruelties, at which nature shudders, had been directly or indirectly imputed to his client, and the impression enforced by such talents and eloquence, as no former occasion had ever seen brought into one point of action.

To a case thus pampered, he had almost said corrupted, by these luscious delicacies, the Advocates of his client could only bring plain facts and arguments. They were even deprived of the charm of novelty, the power of which, though perhaps unseen by their Lordships, they knew to be great on the public at large. They had, besides, the irksome province of dispelling brilliant illusions, seldom a very grateful task; and if their

* HIS MAJESTY opened the Session of PARLIAMENT on Tuesday, January 31, and on the following day the House of Lords resolved to proceed further on the Trial on Tuesday, the 14th of February.

PART V.

B

abilities

abilities were equal to it, the almost expiring patience of their client denied them the necessary time.

Under all these disadvantages they were sustained by the recollection, that the conflict was before a tribunal, not of expected, but experienced justice, of hereditary honour, above partiality, and in knowledge of the various circumstances and relations of the several parts of the Empire beyond the reach of prejudice. Their minds attended only to the voice of reason—to the dictates of truth, and to the accomplishment of substantial justice. It mattered not in what form the accusation or the defence came. The point on which they were to decide was, the simple fact, and the less ornamented that fact was, the more easy, of course, it must be to discover its validity. A true fact, therefore, appears to greater advantage when naked; and justice pays it much more respect in that innocent state than when it is dressed out in all the gaudy and rich apparel of the most beautiful eloquence; for when it masks itself in the flowing habit of rhetoric, a very proper suspicion arises, that it is either an impostor or that it has some black spots to hide, which if not covered would betray the cause it was thus clothed to support.

The province of his and his brother Counsel's duty was, therefore, to give those facts, not as the ingenuity of the Hon. Managers had laid them down, but as they really and *bona fide* stood. In doing this, it would be necessary to recapitulate what had been advanced, in order to shew that eloquence was substituted for proofs, and acrimony supplied the place of evidence. This, no doubt, would add to the expiring patience of his client—to the trouble of their Lordships—and to the Herculean labour of the whole Trial; but in the end it would subvert the most singular combination of talents that ever were employed to persecute an innocent man, and the most rich and powerful treasures of imagination that could be collected to support that persecution—a persecution which he should pray to God no other British subject might ever experience.

Their client was now at the entrance of the fifth year of his trial—a situation in which no British subject had ever stood before, and in which all must concur in wishing that none might stand again.

This great delay he was well aware might be in some measure attributed to Mr. Hastings's Counsel, who so often took exceptions to the mode of proceed-

ing adopted by the Managers, and consequently gave the Lordships so much trouble in retiring to decide upon each question, that there was an actual loss of one whole year going from the Court to the Chamber, and from the Chamber to the Court. If the defendant had this consolation in the wisdom of their Lordships, that of twenty-four instances where objections were started by his Counsel, twenty-three were decided in his favour.

But though they had been so far successful; not to have often interrupted their Lordships by errors, he felt ashamed of his own presumption, when he considered the importance of the task which he had undertaken, and all spirit and hope sunk beneath it. He had been taken from the ordinary habits of his profession, with no particular knowledge of the local interests of India, and had, on this and many other accounts, a claim to the protection of the Court. The inequality between the condition of the Counsel for the defendant and of the Honourable persons who had produced the accusation, also enforced this claim, though indeed, by the laws of England, no express difference of persons was acknowledged in the pursuit of justice. He trusted also, that the candour of the Honourable Managers would not permit them to animadvert harshly upon any improvident expressions of theirs, but would permit them to use, if not the laws of retaliation, at least those of an adequate self-defence.

It was certainly not his intention to intimate any disrespect of the whole body by whom the accusation was produced, or of the Gentlemen who had more especially the conduct of it; but he could not avoid mentioning, that in criminal prosecutions it had been the custom of England, varying only in one prior instance, that nothing but plain arguments should be used against the defendant. The only instance prior to the present Impeachment was in the prosecution of Sir Walter Raleigh, and that instance was the disgrace of the otherwise great and learned person who had violated the humane rule. In the Impeachment of Bishop Atterbury, Sir Clement Willoughby had acknowledged this rule by his practice, and by his assertions; and the noble Lord who had led the prosecution against Lord Lovat, in an apology for replying at all to the Counsel for the defendant, said, that he had avoided all inflammatory language, and used only plain arguments against the defendant.

It had been urged, that in prosecutions for misdemeanours such language might be justifiable; but he must contend, that it was justifiable so far only as it was necessary to prove that the offence complained of was a misdemeanour.

He again implored the protection of the Court to his client, and their indulgence for himself. He had much to offer on the subject; but trusted that he should not tire out their patience before he convinced their reason: and he added again emphatically, "If we do not claim the law of retaliation, we shall exercise the rights of self-defence." He did not mean to insult the feelings of the Managers. It was enough to accuse them of being in error, without endeavouring to wound the mind by acrimonious abuse. The finest attribute of nature was mercy—the worst was revenge. He pitied the temper and disposition which led a fellow-creature to insult the persecuted, and could never be brought to conceive that justice was the end looked for, where vengeance was the means employed to obtain it.

Thus far Mr. Law caught the attention of every person in the Hall; but quitting the fertile plains of imagination for the dry and barren subject of recital, the remainder of what he delivered being tedious recapitulation, did not gain on his auditors, and tired out the patience of many. It was necessary, no doubt, to the general defence, as it was a recital of those charges made by the Managers, with comments on them that disavowed, and are intended, by facts, to disprove their validity.

He began with the most early age of Asia, drew a picture of Alexander's visit to India, mentioned the system of Braminical government there, and so on till he came down to the first establishment of the English in that part of the world.

From these principles he drew this conclusion—first, That until the English formed a settlement there, the inhabitants were a savage race of barbarians under a government of the most cruel tyranny; and therefore that Mr. Burke was wrong in his description of India "enjoying all the happiness of the golden age, the wolf drinking with the lamb, and the kid sporting in innocent gambols with the tyger, before we planted the dagger of animosity there." The fact was the direct contrary—nay, was more than the direct, it was the contrary in aggravation—for the sylvan wolf not only ate up the sylvan lamb, but the human wolves preyed upon each other. The wars and

devastations of Tamerlane, whom the world called a Hero; the calamities that fell upon the long, and comparatively peaceful, reign of Aurengzebe, were sufficiently recorded in the works of numerous historians; but an inspection into the writings of authors of a more obscure cast enabled him to shew that their governments were founded in the blood of the inhabitants, and, under the Braminical or Mahometan institutions, were completely despotic. Their wars were nearly incessant, and always bloody. There were accounts of 100,000 men perishing in one battle; and in another, where we think he stated the number of men to be 100,000, and of elephants 30,000, at the termination of the conflict only eight remained alive on one side, and four on the other. So far at all events, and, as he contended, in every other respect, the British power and government was clearly a blessing to India.

To shew also that it was no usurpation, he detailed the various Powers which at different periods obtained ascendancy and dominion in that quarter of the world. The Mahrattas, issuing from the mountains in irresistible bodies of cavalry, had established their power, since so much extended, in the year 1640. This at most was only sixteen years before the English empire in that part of the globe; and whatever acquisitions were since made, were consequences arising from provocation on the part of the natives, and the conquests made in war, which we were forced to undertake in our own defence.

Mr. Burke had said, that there never was such a thing as arbitrary power in India. Mr. Law, on the contrary, read extracts from Bernier, Catrou, Gibbon, Montesquieu, Dow, Major Rennel, and many other unexceptionable writers, in order to prove, that previous to our establishment in India, its history is a history of the treasons, murders, poisonings, cruelties, and despotism of the rankest kind; each author stating, that the lands, lives, and properties of every man in India depended solely upon the will of the Sovereign.

Mr. Law most happily explained the purpose for which he gave this account. It was to shew what a happy change had been effected by the prevalence of British power, not to rebut any charge of cruelty alleged against Mr. Hastings, by shewing how much more oppressive the former government had been; and he denied in the most solemn manner, that any one charge of cruelty alleged against his

client had the slightest foundation in fact. He begged leave to impress it on the minds of their Lordships, that of all the cruelties with the exercise of which Mr. Hastings has been charged, not one has been proved—the rubbing the soles of the feet with bricks, the turning the women naked into the open air, the thumb screws, &c. &c. &c. appear, like the baseless fabric of a vision, to have no other foundation but in the fertile imagery of the mind. He equally defended the British Administration in India from the same charge.

Mr. Law's next head was, the rise and progress of the British power in India from the deposition of Suraja Dowla, in 1756, to the elevation of Cossim Ally Cawn, in 1766. He described Mr. Hastings's situation in all that period, as a junior servant, but employed in the high and responsible office of Resident at the Durbar of Meer Jaffier.

He next went through the period of Cossim Ally Cawn's government; and mentioned, most forcibly, the honourable part Mr. Hastings acted, in giving his utmost support to the Government in the war against Cossim, though he disapproved of the measures that brought it on. He told the histories of the three Seals, and of Meer Jaffier's death, in a style that carried universal conviction; and forcibly complained of the injustice done to Mr. Hastings, by introducing those stories at all.

With the close of the war against Cossim in 1765, Mr. Hastings closed his services, and returned to England.

An insinuation had been thrown out by Mr. Burke in his opening, as if there were some sort of corrupt connexions between Mr. Hastings and Cossim Ally Cawn. This Mr. Law refuted by calling to their Lordships' recollection the assertion of Lord Guildford, when he was Prime Minister in 1773, the truth of which was confirmed by the universal voice of Parliament. It was this—That of all the sums presented to different Gentlemen at different periods in Bengal, Mr. Hastings did not appear to have received a single rupee.

Mr. Law, in answer to a declaration from Mr. Burke, that Mr. Hastings, on his return to England in 1765, intrigued for office—affirmed, that so far from it, he was on the point of retiring to the leisure of academic life, when he was called upon to fill a very honourable situation at Madras, and afterwards appointed by the Company, without any solicitation of his own, to the Government of Bengal.

Here Mr. Law described in the clearest terms the difficulties he had to surmount;—that he found a Bond Debt existing of above a Crore of Rupees; in addition to which, the Company had been drawn upon for above a Crore—he had to take the entire management of the Revenues into his own hands—to arrange every department of Government, and to form a Constitution where none had existed before.

Mr. Law described the various important acts that Mr. Hastings did in the two first years of his government; that the systems he then framed were those by which the Revenues, with very trifling alterations, are still administered; that he created two sources of Revenue, Opium and Salt; the latter of which produced, in 1789, above eight hundred and sixty thousand pounds, a sum which more than paid all the dividends, and the annual interest of all the Company's debts in England.

Mr. Law dwelt with great force upon the infinite importance of this great Revenue, the merit of which was solely imputable to Mr. Hastings; and at this point, about four o'clock, the Court adjourned until Friday.

SEVENTY-FOURTH DAY.

FRIDAY, February 17.

The Court met to-day a little after one.

Mr. Law immediately proceeded—and began the second division of his speech by observing, that the relation or history which he gave when he had last the honour to address their Lordships, he thought necessary, on account of the impressions made by some very contrary accounts, and of the unwarranted comparisons which had been made between the state of India previous to the aggrandizement of the British power there, and its situation under the government of Mr. Hastings.

These topics were *in medio* between him and the Honourable Managers, and related, but not essential, to the charges before their Lordships. There were others introduced, not by connection, but in the form of substantial accusations; and amongst these was the atrocious fable of DEBY SING. In his opinion, every accuser ought to have, first, reasonable and probable assurance, that his charge was true; secondly, that it was applicable to the party at the bar; and thirdly, that he should have proof of his assertions, and the accused an opportunity of counter-proof. All these were wanting to the charge of Deby Sing—a tale that had no sort of reference to any one Article which the Commons had voted, and a tale of which the Manager himself had never heard until

fourteen

fourteen days before the Trial began ; nor could he hear it without hearing at the same time that the facts were solemnly denied, and were actually at that time in a course of judicial enquiry.

Mr. Law stated, in the most forcible language, that he had earnestly implored the Manager to put that calumny in some such shape as might enable him to refute it ;—that Mr. Hastings had petitioned the Commons to do it, though in vain. He had only, therefore, to lament, that in this free and enlightened country, a gross and serious injury had been done to a British subject, to which as the constituents of the Managers would apply no remedy, it was impossible for him to say any thing more, because the Lords had determined, that the story of DEBY SING *had no reference to any one allegation in any one of the Articles voted by the House of Commons against Mr. HASTINGS.* Here, therefore, he was compelled to quit the subject, with again most forcibly remonstrating against the unexampled injustice which his client had sustained. The constitution had no remedy for it. In their Lordships' minds such imputations would produce, indeed, only serious indignation ; but with the great mass of the public, who would not reason with the delicacy and accuracy to which their Lordships were accustomed, the impression would probably be lasting.

Mr. Law then went through all the material acts of Mr. Hastings's Administration, from the year 1773 to 1780, when the Carnatic was invaded, and saved by the spirit and prompt decision of Mr. Hastings. He occasionally quoted passages from Mr. Burke's former speeches—refuted his assertions, and was in some points particularly severe on Mr. Francis, whom he declared to have held a doctrine, relative to Treaties, the most mischievous and flagitious ever yet heard of.—He remarked, that Mr. Burke, in one of his speeches, had mentioned the number of Treaties which he had supposed to have been violated in India ; but though, of all the violations of faith ever heard of, the breach of Treaty with the present Nabob of Oude, on his accession to the Government, was the most palpable and notorious, he had entirely passed that over.

Mr. Law, after a multifarious detail, arrived at a subject which had occupied so much of the eloquence, and so much of the invective of the Honourable Managers—the name of Goonga Govand Sing : a name, said Mr. Law, which has been,

I will affirm, clamorously shouted from one end of the British Dominions to the other, as the Monster offending Heaven by unheard of crimes, as brutifying the species, and blating the very name of Man.

"I declare before Almighty God," said Mr. Law, "that after the most minute research, the most attentive investigation, I am unable to fix upon any one action of this man's life which I can term criminal, *culpable* may be applied to him, perhaps, but even *that* not highly." After having therefore painfully sought for the cause of the unprecedented outcry that had been raised against him, he found it to be no more than an offence which Mr. Law begged leave to resemble to a lessee of fee farms who should also be a collector of the customs, and who, when applied to for the collected imposts, should return for answer—"No, the sums in my hands I cannot part with, but I will place them against such rents due to me for the farms which I have let."

The offence had been no greater, that had in the splendid oratory of Managers handed him down as the scourge of suffering humanity and the disgrace of his employer. Such a man reflected no disgrace whatever upon a nation whose agent he became—he was the most proper person that could be chosen ; and whatever might be rumoured against his moral character (as where can be found the character that has not been aspersed ?), he solemnly affirmed it to be his steady belief, that nothing which would wear the title of strong criminality could be fastened upon him.

[The Managers were in general absent during this strong vindication.]

Mr. Law next proceeded to consider the right of the British Government to demand the fifty lacks subsidy from Rajah Cheyt Sing. He chose to consider the subject widely.—He affirmed, that the commutation of fifty lacks for the Troops was such a demand, as every people upon earth would have admitted to be legitimate ; that where protection flowed from the Prince, assistant service naturally resulted as the consequent from the subject. Such were our own facts at an early period of our history—the practice was sanctioned by every Government in India, through the infinite gradations of their greater or less importance.

If Mr. Hastings were guilty for the making of this demand, who would be found the partners of his guilt ? Why the India Company, for having omitted to
express

express their disapprobation of the measure—His Majesty's Ministers for the same neglect, and all those who were implicated by the having concern, mediately or immediately, with the Government of the British Territories in India. He could prove, that during three years the thunder of 'disapprobation had slept. Had it been heard in May 1782?—No, not a breath of blame was even agitated—nay, he would go down as low as the month of October in the same year—all was silent on this theme.

Mr. Hastings censured, recalled even, for imputed offences, had on this topic experienced no reproof; as if the demand had nothing that could for a moment be imagined unfair, or not common in the usages of India—even enmity had been silent upon this measure.

Mr. Law then, returning to the history of Mr. Hastings's transactions in India, contended, that the duties payable upon salt and opium had been converted by him from a source of private emolument to public revenue; so much so, that in the year 1789-90 the duty upon salt amounted to 86 lacks, 860,000l. more than formerly, and that upon opium to 17 lacks, or 170,000l.: that the military savings of the same year were 24,000l. and the civil savings 235,000l. and these and various articles formed a total of two millions sterling, besides one million appropriated to the payment of the Company's debt.

The deductions from the Nabob's revenue, Mr. Law justified upon the ground of the necessity for his establishment having ceased when the East India Company became their own *Durbar* in his dominions. To have continued this establishment, Mr. Law said, would, in the terms of a celebrated publication, have been "to embalm a carcase not worth the ounce of gum bestowed upon it; to offer meat and drink to the dead, a practice not honoring the dead, but disgracing the survivor." The Nabob was relieved by Mr. Hastings from all the cares of sovereignty, and had thus, what appeared to be the *ultimatum* of Asiatic happiness, a large income, a great deal of money to waste, and nothing to do.

The remainder of Mr. Law's address consisted in defending Mr. Hastings against the censure of the Supreme Council, of whom, he said, some members had

permitted their honourable minds to be prejudiced by others not equally respectable; and that the whole body had given an early indication of their temper towards Mr. Hastings, by objecting to the small number of the ordinance fixed upon their landing, and to other circumstances of a similar import. Mr. Hastings, however, though foreseeing resistance and counteraction from them, had resolved to hold his place in the new system. He knew that his Country had a stake in his efforts, and he endured insult, he submitted to every thing the most galling to a high-minded man, for its welfare. He stayed to save, and, staying, did save that territory, which, by his means, is now within the scope of the British empire.

Mr. Law then adverted to the Rohilla war, to Mr. Hastings's correspondence with Mr. Middleton, and to his conduct towards Adoph ul Dowlah, points upon which nothing interesting occurred.

At a little before five, when Mr. Law, after reading a very long letter, was proceeding to some observations upon it, the Chancellor said, that the hour was arrived at which it was proper to adjourn*, and the Court accordingly rose.

SEVENTY-FIFTH DAY.

TUESDAY, February 21.

This day the Court met at half past one, when Mr. Law made the most brilliant close to his opening speech that has ever been uttered in a Court of Justice.

He began by alluding to what he said on a former day, on the spirit and decision displayed by Mr. Hastings when the first news arrived of the disasters in the Carnatic. He passed the highest encomiums upon Sir Eyre Coote, who, he said, had gone to Madras at a season when, if orders had been literally obeyed, no ship could have appeared on the coast; but upon that occasion, Mr. Hastings and Sir Eyre Coote thought it necessary to risk every thing, the loss of men and of money by the elements, in order to save India, which they effected. Mr. Law pointed out three separate periods, one in May 1778, another in June, and the third in September 1780, when India was preserved by his own separate responsibility, and by measures for which he now sat a defendant at the bar.

After stating and justifying Mr. Ha-

* The Judges, and the few Lords who remained, had been standing for above an hour apparently expecting this adjournment.

The Lords, at first, were about thirty; the Peereesses, six. The whole attendance was almost the thinnest we remember, and the cold was excessive,

stings and Sir Eyre Coote on the subject of his extra-allowances, Mr. Law came to the most beautiful and pathetic passage we ever remember to have heard.

He called to their Lordships' recollection the virulent, opprobrious, and abusive epithets which had been applied to Mr. Hastings in the course of the present trial—"Captain General of Iniquity"—a man "with a heart corrupted and blackened to the very core—the head and fountain of corruption—who had been guilty of every crime, from the meanest lie to the foulest murder."

Mr. Law said, these expressions had done his client no injury; every honourable mind had rejected them, but he repeated them now merely to contrast them with what was the real character of Mr. Hastings.

Here Mr. Law stated the subject in such a manner, that none but the most determined in obstinacy could resist the force of his conclusions. Had not Mr. Hastings been more than four years upon his trial? Was any one quarter of the globe ignorant of the combination that had been formed against him? Was it not notoriously known, and the subject of common and eager curiosity in India? And what was the consequence? Had *one man* been found to utter a complaint against him? On the contrary, was not the table of the Commons covered with praises in his favour, with a denial of the justice of the accusers, and an acknowledgement of the virtues of the accused?

Mr. Law here read several extracts from the testimonials * transmitted from India in favour of Mr. Hastings, and dwelt upon

* It may not be amiss to remark here, that all these Testimonials are before the House of Commons, and printed by their order in 1789, on the motion of Major Scott, who then moved for their production, and argued upon them to justify all that Mr. Dundas said of the flourishing state of Bengal, in opposition to the gross calumnies which in those times were circulating, to induce the public to entertain a contrary opinion.

In the year 1789, the third of Mr. Dundas's Budgets, and the third also of the Impeachment, an immense body of Testimonials in favour of Mr. Hastings, and of course of the past British Government, arrived from India. As the statements of Mr. Dundas in the House of Commons, and Mr. Burke in Westminster Hall, differed so essentially, it was moved that these Testimonials should be laid upon the table of the House of Commons, and afterwards that they should be printed. It was hoped that some one independent Member would be struck with some surprise, and with some indignation, when he reflected upon the different language held by Mr. Dundas and Mr. Burke, both equally supported by powerful majorities, and that these Testimonials would throw the balance for veracity into the scale of Mr. Dundas.

*Of a printed copy of these Testimonials, Mr. Burke has been nearly four years in possession.—In the year 1789 he promised to bring them in evidence, but he has forfeited his word, as in his promised Impeachment of Lord Guildford.

Mr. Burke is surrounded by Lawyers and Solicitors, entertained and continued at an enormous expence to the public, something more than fifty thousand pounds, for every foot of expence; it may appear odd, that he should apply to Mr. Law for that information which his Solicitor's clerk might have given him in an instant.

But to oblige Mr. Burke, we will insert the passage, from the copy that was printed by the last House of Commons.

The Testimonial is signed by persons of all descriptions in the city and neighbourhood of Patna, the capital of the Bahar province; and many of those who signed it added some words immediately from themselves.

The first class of men who signed this Testimonial were, the "Kauzes," or Magistrates; the second, "The Moosties;" the third, "The Officers appointed by the Crown to superintend the Charity Lands;" the fourth, "The Canonogoes;" the fifth, "Omrahs and the sons of Omrahs, Khawns, Munsubdars, and Zemindars, being Mahomedans."

Among this class are the descendants of all the great families in Bahar, and other parts of Indostan, which certainly should entitle them to peculiar attention from Mr. Burke.

One of this class of Noblemen, of the name of "Lutf Ally Cawn," adds the following words, which Mr. Law read, under his seal: "I, the humblest of the servants of God, am a grandson of the Nabob Azum Khawn, Azum ul Dowlah, Shumseer Jung Behadre, and the son of Sujed Ameer Mahomed Khawn Behadre—I affirm, swearing by the Prophet, and by the Holy Fathers, upon all of whom be the grace of God, that without ever having seen Mr. Hastings, I am thankful to him. In truth, that excellent Gentleman was without an equal. Even in former times, there were few rulers so just, and possessed of such liberality, that all mankind, from the high to the low, from the great to the small, sh

upon them with infinite force, asking their Lordships, whether the Managers or the inhabitants of a great country were the most likely to know the character of Mr. Hastings on points in which they were especially concerned. He said, the character of Verres had been adverted to; for what purpose he could not conceive, since in no one point could a comparison be possibly drawn.

During all this part of Mr. Law's speech, Mr. Burke seemed uncommonly agitated, and when Mr. Law was reading the testimonial of one person, who declared that he had never seen Mr. Hastings, but swore by the Divine Being, that he was under infinite obligations to him for his care and attention to the people of Bengal, Mr. Burke bowed to Mr. Law, and begged to know the name of the *anonymous swearer*.

Mr. Law then proceeded to other parts of Mr. Hastings's Administration, and utterly disclaimed the idea of defending any one of *his acts* on the plea of necessity, although he would shew a necessity far beyond any that any public man ever had to encounter.

Of Ally Ibrahim Cawn and Mr. Larikins he spoke in the highest terms, as of two men upon whose honour, ability, and unblemished integrity, a doubt had never been cast in India. He exposted Mr. Burke's blunder, who had affirmed, that no Mussulman had ever been Chief Ma-

gistrate of Benares before Mr. Hastings's time, and he read the testimonial from Benares, where all ranks of people returned their warmest acknowledgements to Mr. Hastings for the appointment of Ally Ibrahim Cawn.

Mr. Law next went through all the points in the four Articles upon which the Commons had rested their cause. This he did in the clearest and most satisfactory manner.

At the conclusion of his speech, Mr. Law said, that he had then given the promised detail of events down to the period in which Mr. Hastings thought that he might honestly indulge his wish for retirement, a thought which did not occur to him till scarcely an enemy or a difficulty in India was left to require his presence. After a conflict with many European and many Indian enemies; after a tumultuous period of six years from the discovery of hostile intentions in the French to the peace of Bangalore; when he saw a peace concluded without the loss of any part of the Empire; when the rival power of France was reduced; when the Nizam was soothed from his enmity; when Madajee Scindia, conquered by our arms, but more subdued by our generosity, was not only in peace, but in friendship with us; when in the past wars, the lustre of our military character had been carried to its greatest height; when our finances, exhausted as they had been, had

on all accounts, be thankful to him; and not one of the whole human race should complain of him. God is witness, that the late Governor General is one of those Rulers who are of distinguished eminence. Wherever he is, may God keep him under his holy protection!"

The sixth class are, "Begums, and other women of rank;" the seventh, "Men of learning and wisdom, Prelates, and Descendants of the Prophet;" the eighth, "Rajahs and Rys, Zemindars and Civil Officers, and other persons of rank being Hindoos;" the ninth, "Bankers and Merchants."

Such are the descriptions of persons included in the Testimonial signed by the man whom Mr. Burke called "an anonymous swearer." Extracts were read from many other testimonials; but the following is so curious, that we shall copy it, for the information of our readers:

"We the inhabitants of the Hills in Ingleterry, in the Chuckla of Rajamal and Boglepore, have learned, that the inhabitants of the district of Boglepore have written in praise of Mr. Hastings; wherefore why should not we, who are praising Mr. Hastings, write also, and not remain silent? We therefore repent, that we formerly lived on the Hills, like the beasts of the forests, and during the government of Mr. Hastings became like other men, and the qualities and virtues of men were instilled into us. Formerly our means of subsistence were no other than those of plunder and rapine, and we existed with the greatest difficulty; but now, by the wise conduct of that Gentleman, we live at ease, and, like others, are happy and justified with the Company. As this ease and civilization, which has produced respect to us among mankind, has been the effect of Mr. Hastings's conduct and management, we never experienced other than kindness, nor have any one of us heard of any oppression from him. On this account we are pleased with Mr. Hastings."

How far these Testimonials, transmitted by Lord Cornwallis, tend to repel that general abuse which has been cast upon the Government of Great Britain in India, every Gentleman will judge for himself by the contents of them.

been so far recovered as to leave but an insignificant debt, scarcely amounting to the Bengal surplus for two years, and which the increase of the duties upon two articles might defray; in this fortunate crisis, he prepared to return home, and after receiving the thanks of the countries which he had governed, he anticipated those of the nation for whom he had governed them.

The persons whom he left had waited till his dereliction of the government before their praise was offered, that no imputation might be made upon their sincerity; and praise so disinterested from those who knew so well whether it was deserved, would embalm the memory of Mr. Hastings when he should be no more, and enable him, while yet alive, to look down with indifference or scorn upon every malignant effort that might be made to injure him. The man who had these praises, Mr. Law said, should not be degraded by fear. With his reverence for their Lordships, he ought to mingle respect for himself; conscious as he was of no guilt, nor of a necessity for any allowance more than was made to the errors of all human beings. His conduct would be found to have been directed by the most ardent desire to promote the good of his country; and his minute deviations from the fetters of orders, which could not be obeyed without injuring it, strengthened the proof of this desire.

The difficulties endured by Mr. Hastings had been so far fortunate for his country, that they had induced Parliament to relieve his successors from the chance of similar counteraction, and to entrust the noble Lord now at the head of affairs in India with the discretion necessary to the giving union, permanency, and effect to the operations of government. That nobleman had now only to ascertain by his own clear powers of enquiry the point upon which the public safety rested, and to act upon the decisions of his own judgment. It was happy for the country that he was so entrusted.

The sum and substance of Mr. Hastings's conduct had now undergone the most serious and able scrutiny to which the actions of any man had ever been subjected; he relied, for a complete deliverance from his troubles, upon the wisdom and the justice of the Court.

Mr. Law having concluded, the Court was about to rise, when Mr. Burke said, that without wishing to impede the effect of the elegant peroration which had just been delivered, he must take the liberty

PART V.

to enquire of the Counsel, whether, as he had given the name of one of the persons by whom a testimonial had been sent from India in favour of Mr. Hastings's conduct, he was willing also to give the name of the other?

Mr. Law answered, that he had asserted nothing which could not be made out by evidence; that the papers to which the Hon. Manager alluded should, in due time, be placed upon their Lordships' table; and that if information concerning them was required in the meantime, it might be had of him in any other place.

Mr. Burke. "I wish then, my Lords, to put another question to the Counsel, to which I shall probably receive a similar answer. I would ask"—

(Here several Lords rose, and a call of "Order, Order!" prevailed.)

Mr. Burke was stating his question, when, the call being repeated, he said, "I beg the indulgence of your Lordships. I do not see the Court sufficiently, and cannot tell from whom that call comes. I would ask"—

The Duke of Leeds immediately rose, and moved an adjournment to the Chamber of Parliament, which accordingly took place.

SEVENTY-SIXTH DAY.

THURSDAY, February 23.

Mr. Plomer, this day, began his part of the Defence by observing, that the tendency of many imputations extraneous to the Charges, as well as of the Charges themselves, was certainly to create prejudices in minds not strengthened by some extraordinary advantages of education and habit, against the general character, the conduct, and the principles of Mr. Hastings. He should, therefore, hope for the pardon of their Lordships, if he introduced his more formal Defence by some observations, intended to oppose the advantages of the accusation. He hoped, he was confident indeed, that no such prejudices could exist in the minds of their Lordships; that Mr. Hastings, as to them, was *rectus in curia*; and that when he meant to lay aside all the influence to be derived from the general good character of Mr. Hastings, independent of the Charges, so also all general prejudices to his disadvantage would be dismissed.

If his own manner of treating the Charges should resemble that of the Courts of criminal jurisdiction, to which he had been accustomed, Mr. Plomer hoped, that his cause would not suffer upon that account.

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count. Yet he could not compare the efforts made on behalf of the accusation, with those which would be in his power, without fear. If great and splendid exertions had been made by the prosecutors, certainly such exertions might be justified in the Defence; yet should any thing more be expected of him than a plain and attentive examination of the cause, he ought to take shame upon himself for assuming the task. Nothing of that sort was within his power; he knew himself to be wholly unfit for the attempt, and certainly should not make it.

With respect to the House of Commons, the accusers in the cause, it was impossible to believe, that any improper intentions could direct their conduct, and he hoped that none of the observations which he might think it necessary to make, would be supposed to impute to them any thing further than mistake. Their body comprized a great part of the learning, the talents, and of every honourable distinction pertaining to man; but it was not inconsistent with this full admission to believe them fallible. Were they otherwise, the political as well as the judicial functions of their Lordships would be useless. Mistake was more probable to the most accurate, the most learned, and the most laborious, when the actions to be examined had passed in a foreign country, and the information concerning them was to be derived chiefly from oral narrative. Still further was the probability increased, when the enquiry was frequently to be directed from the actions to the intentions of men. Continued accuracy of decision upon such subjects, was consistent only with Omniscience. The faculty of reading the heart and mind of another, was not to be assumed by the wisest and best of human beings. It was, therefore, free to him to discuss the truth of the Charges, without being supposed to imply any disrespect, collectively or singly, to those who preferred them. Those who voluntarily supported the Charges had learning, character, talents, honour, and rank, which it was almost impossible to believe should not influence the public mind, and win a degree of confidence to whatever they undertook. They had accompanied and increased these advantages by the most splendid exertions of eloquence; he did not presume to censure these exertions: but he intreated their Lordships to consider them as heightening the disparity between the accusers and himself, which entitled him to their protection.

He had been more inclined to notice these advantages, from what had been thrown out in the opening of one Charge, as to the unanimity with which it passed the House of Commons. If Charges were taken to be true, on account of the character of the accusers; if they were true, because the House of Commons had passed them; then were the Court and the Advocates for the accused engaged in a business perfectly nugatory. He did not mean to impeach the privileges of the House of Commons, but they could have no privileges independent of justice.

Another topic was, that the honour of the House of Commons was committed in the event of the trial; that Mr. Hastings could not be acquitted without a sort of conviction of the House of Commons, for having preferred improper Charges. He did not perceive the necessity for such a conclusion; but if they were reduced to that point, that the honour of the House of Commons and the honour of their Lordships were in opposition, then surely before the honour of the Accusers was that of the Judge. He could say, however, for the House of Commons, if it was not presumption in him to assume their voice, that the wish of every Member was for justice; that, if Mr. Hastings could be liberated from the Charges which they had preferred, they would rejoice in his acquittal; so far were they from wishing that he should innocently suffer for considerations of their honour.

Mr. Plomer then begged their Lordships to pardon him for having introduced these preliminary observations, and intreated, that if in the consideration of a long Charge he should commit any mistakes, and many he was aware he must commit, the weight of them might fall not upon the Gentleman at their bar, but upon himself. It was necessary for him to make this intreaty, from the observations which had been made upon a paper drawn up by a friend to Mr. Hastings, and formerly produced in his Defence. He was sure, that if the Honourable Gentleman who made those observations had known the circumstances under which this part of the Defence had been composed; that it had been inaccurately drawn up by a friend of Mr. Hastings; that much of it had never been seen by him; and that parts had been hastily read to him when his mind was occupied by other circumstances of his Defence; that Honourable Gentleman would have been

the last man to use it to the disadvantage of Mr. Hastings.

Mr. Plomer lamented, that Mr. Hastings, having once suffered for the conduct of an injudicious friend, was now in part committed to an injudicious Advocate. He had, however, devoted to the Charges all the little faculties which he possessed; he believed that he understood them; and he was confident that, though close attention was requisite to any comprehension of the subject, no individual could fail to derive from it a perfect conviction of the honour of Mr. Hastings, of the purity of his intentions, and of the rectitude of all his measures.

Mr. Plomer then entered into an examination of the Benares Charge, which he accused of being a series of misrepresentations—want of precision—blunders, or intentional mis-statements of facts; he stated, that Bulwant Sing was a mere feudal tenant, and that Cheyt Sing became possessed of the territory of Benares upon the same feudal terms that his father held it. He insisted in the same manner that his leader (Mr. Law) had, that Cheyt Sing held his possessions in the double capacity of Zemindar and feudal subject: That in the latter quality he was obliged to furnish all the resources for the common defence: That the Company were supreme; and that he, as a Renter, not only owed obedience, but was actually obliged, by his tenure, to join in the general cause. That general cause Mr. Plomer stated to be the salvation of India; and the facts which he adduced went close to the question.—At the time when all the Country Powers were in junction, and when Major Cormack was upon the march to attack Madjee Scindia, in order to detach him from the general confederacy, Bulwant Sing immediately deserted the Company and the British forces, and withdrew himself. After shewing, in a great variety of points of view, that Cheyt Sing had behaved in a traitorous manner to the Company, he came still closer to the question, namely, that the whole of the territory enjoyed by the Rajah was merely a *rental*, and that he enjoyed no other power than as a mere tenant.

Mr. Plomer was most remarkably happy, in alluding, with the utmost delicacy, to the remarkable difference of opinion which had taken place between Mr. Pitt and Mr. Fox on the Benares Article.

He said, that Mr. Fox, upon opening the Article, had stated, that a Right Hon.

Gentleman, of the first talents in this kingdom, had differed with him on the *right* which Mr. Hastings had to demand military assistance from Cheyt Sing; Mr. Pitt affirming, and proving, as Mr. Plomer conceived, that the *right* was indisputable.

Mr. Plomer then went through an infinite number of arguments to prove that Mr. Pitt's ideas were right, which, said Mr. Plomer, if they were so, totally *destroyed* every foundation of the Article.

Here Mr. Plomer exposed the dreadful situation in which a British subject, who had made the greatest and the most successful exertions in the public service was placed.—Mr. Fox denied the right—Mr. Pitt justified it. What then was Mr. Hastings to do? He stood now impeached, because he had acted up to his own opinion, which was contrary to Mr. Fox's. He *would* have been impeached if he had taken the other ground, because the other Right Hon. Gentleman differed in opinion.

After putting this in an infinite number of lights, and exposing the contradictions and absurdities in nine of the first allegations of the Article, and in such a manner that it is absolutely impossible to follow him in detail, the Court, seeing the impossibility of his concluding on this day, adjourned until next Wednesday.

SEVENTY-SEVENTH DAY.

WEDNESDAY, February 29.

Mr. Plomer commenced a very logical, impressive, and convincing oration, by humbly returning his grateful thanks to their Lordships for the patient hearing they had afforded him when he had last presumed so considerably to occupy their Lordships' attention. His abilities, he admitted, were extremely inadequate to despatch impressions made by eloquence so consummate; if he had succeeded, it must have been by the mere force of the facts adduced; yet he should hope he had sufficiently proved the point of right in Mr. Hastings to make the demand, the subject of this Charge, upon Cheyt Sing.

Their Lordships would recollect, he said, that he had discussed the matter as low as the year 1775, when it appeared that Cheyt Sing was then considered solely as a *Zemindar*, and that the rights of Sovereignty heretofore invested in the Nabob of Oude were virtually existent in the British East India Company, and binding upon the Rajah, as being legally his Sovereign paramount.—Not the slightest

lightest alteration had been made in the tenure by which he held his Zemindary : he was to be considered to all intents and purposes a Zemindar of the Empire, subject to all the claims incidental to such a situation.

His rent indeed was paid ; he paid, for instance, a sum of 230,000*l.* sterling rent to the Company for those territories, the produce of which were known to be 500,000*l.* sterling. Were these trivial advantages ? Mr. Plomer affirmed that they were not, and added, by way of illustration, that he had no manner of doubt there would be found few of those who heard him, that would be likely to reject an estate of such produce at the above quit-rent.

It had been the waim with of Mr. Hastings to shew peculiar favour to this man, whom he was accused of maliciously and wickedly having endeavoured to ruin. — This object had been the cause of various Consultations in the Supreme Council of Bengal ; — on the 12th June 1775, on the 5th July following, on the 16th August, and on the 24th ; on the 13th December 1775, and further on the 15th April 1776, and the 29th July. The propositions that had from time to time been before the Honourable Board, he had nothing to do with ; the Managers had indeed grounded upon them matter of charge, but not one syllable had they taken from the actual propositions which Mr. Francis Fowke was at this period charged to carry with him to Benares, for the assent and subscription of Rajah Cheyt Sing.

Now if so happened, that far from the slightest implication flowing out of these propositions of absolute sovereignty ceded by the Company to the Zemindar, the very opening Article stated, that the Rajah was to admit, with all the solemnity of oath, the paramount Sovereignty of the Company ; from whom he acknowledged to hold his said Zemindary, with the full and clear powers of legislature, collection, &c. subject only to the said neat rent, with a recommendation to keep up a body of 2000 horse, for the service of course of the Empire, — for, as the learned Counsel well argued, it was not simply Benares they were to defend — for the country was, in short, little susceptible of the services of cavalry — they were to be held for general defence, to be employed as we might command ; and accordingly, to ascertain at once for whose use they were designed, the Company add 15 rupees per man towards the decay of their expenses.

Not one syllable of all this had been look-

ed at by the Managers. They had, from garbled propositions in the Council, chosen to consider Cheyt Sing as a Sovereign Prince, and the demand of Mr. Hastings to be a wanton, cruel, and vindictive infringement upon his rights, in pursuance of a malicious design he had conceived to ruin the Rajah.

But what was Cheyt Sing ? He should effectually prove to their Lordships, that he was precisely such a man as his father ; that all within was hollow, fraudulent and false ; that what began in disaffection, was continued through simulation to treachery, and from treachery at length to open rebellion. Under the protection of the Company he had attained such height, that, in the words of the Poet,

“ He ’sdamn’d subjection, and thought one
“ step higher

“ Would set him highest, and in a moment
“ quit

“ The debt immense of endless gratitude.”

But what ground had the Right Honourable Managers for the imputation of malicious motives to Mr. Hastings ? The heart of man must be inscrutable, as to the motives of action, to every eye but that of Omnipotence.

What there were no documents to prove the malicious design, perhaps it was but fair to listen to presumptive proofs. He should resort, it was fair for him to resort, to general character, and then demand from the testimonies of those who had lived under his government, and those who knew him in Europe, whether they judged him capable of such a conduct. Not one soul was to be found in India, who did not bless the mildness of his temper, and the forbearing humanity of his government. “ Oh but (replies your Manager from his closet) you Spectators of his actions are miserably deceived in your ideas of this man : I know him better than you all. — You are a set of weak drizzling ideos, insensible to wrongs, and sufferings, and shames — What you have taken for clemency, was oppression. I tell you, that he was your tyrant, and despot oppressor ; that he banqueted upon your blood, and his very meals produced the depopulation of your Provinces.”

Europeans have stronger heads — To them a different language must be held — Capt. Darnell is brought in a dozen times for the exemplification of the subject. A neat phrase, forsooth, was to let aside these testimonials to Mr. Hastings’s character, brought forward, as they were, vol-

luntarily

Voluntarily in a season of distress, when friendships are like to cool :—" You who thus praise him are a trained banditti regularly disciplined, and under the pay of this Captain General of Iniquity."—" How many gentlemen of character does every Old-Bailey sessions pronounce guilty—Death!" But tricky phrases were not in their Lordships opinion to defy the matter.

The demand was urged to be malicious, upon the ground of—First, That Mr. Hastings pretended a War between France and the British Empire non-existent, and of which he had no authentic advices; and, Second, That his Treasury being full, there was no need to make this demand upon the Rajah.

Mr. Plomer proved the communication of the intelligence from Grand Cairo, and the summoning of the Council thereupon—the unanimity of their opinion as to the necessity of defensive preparations, nay even offensive measures, in consequence of which Pondicherry was invested, and Chandernagore absolutely taken.

He affirmed, that Mr. Hastings could possibly act in no other way for the honour and benefit of his Country.—He was not to wait for the creeping declaration of Hostilities in a Gazette—He was to anticipate, for the security of the Empire, such speedy confirmation, and by a bold and vigorous measure save the mighty charge that was entrusted to his abilities.

Touching the fullness of the Treasury, Mr. Plomer ludicrously parried the attack by putting into the mouth of Cheyt Sing the following expressions :—" Lay out until the Rupees shall have flown from your Treasury; for until the last is disbursed, it will be malice to demand any thing of me. Let the rest of the Empire pay; but so long as they are able, it will be malice to touch me."

How was an honest man to disprove such allegations of malice? Suppose, he said, a Charge of a similar nature were to be brought against the Right Hon. Gentleman who had opened this Charge, and he knew no heart more clearly exempt from any thing mean, dirty, and malicious: a more exalted mind, and a happier intellect, he knew not, than those of that Honourable Manager (Mr. Fox). How was it likely he would reply to it? Why, it was probable, he would first affirm flatly, that the whole was false. If it was persisted in, he would perhaps add, "Examine my life, enquire of those who know me! If that will not satisfy you, prove it was even my interest to do what you charge me with."

Was it the interest of Mr. Hastings, thus charged with the concerns of a great Empire, in the outset of a war, to raise up within the very Empire an enemy exasperated by injuries, and stung by a malicious and inveterate persecution? It surely was *not*.

Thus having argued the subject, he solemnly adjured their Lordships not to credit the voice of unfounded suspicion, which, were it suffered to operate against any man, might be brought to blast every action of their lives, and every vote they had ever given. He pressed in the most earnest manner this conclusive reflection, and thus finished a very able refutation of the First Charge against his Client.

SEVENTY-EIGHTH DAY.

THURSDAY, March 1.

Mr. Plomer this day, in a very modest exordium, stated his sensibility of their Lordships' goodness in the favouring with their attention the efforts of his humble abilities; but, trusting their Lordships were anxious as well as himself to remove as speedily as possible the load of obloquy cast upon a Gentleman declined into the vale of years, to clear his honour and his person from suspicion and a state of trial, he should continue, with as much brevity as might be, to examine the allegations against him.

Touching the demands made upon Cheyt Sing, they were contended to be culpable upon three grounds; *

First, That there were bad motives for these acts, assumed to be unjustifiable;

Secondly, That Cheyt Sing was well affected towards the British Government;

Thirdly, That Mr. Hastings had a pre-conceived malice against him.

First of the first—Mr. Plomer went into a prodigious body of evidence, Minutes of the Council, Letters from the Governor General, &c. to shew the sense entertained of the expediency of the demand made upon Cheyt Sing, and the clear and explicit assent of Mr. Francis and Mr. Wheeler to the propositions of the Governor-General.

Mr. Hastings, in consequence of this sanction of the measure, writes to the Rajah to state, that in consequence of hostilities having been declared between France and this country, it had been determined to call upon him for the five lacks, as his quota towards the defence of the Empire. This was in the month of July 1778.

What, said Mr. Plomer, was the reply of this faithful zealous Tributary of the Country?

Country? this ready and eager co-operator with our designs? Why simply this:—

“He owed his life to the Company—He had received the honour of their commands, and touching their purport he would write at a future opportunity.”

To a pressing exaction he transmits a sentence of cognizance, and adds, You shall know more at another period. How does Mr. Hastings act in this juncture?—Why, instead of doing aught that might harass the Rajah, he directs the Resident at Benares to make the matter known to the Vakeel, and the Vakeel, affirming he has power only for a year, accedes to the demand of the five lacs.

In the mean time, however, it is stated by Mr. Francis, that it would probably be less distracting to Cheyt Sing, if the subsidy were to be taken by installments, and added to his gifts, or monthly payments.

It was very far, Mr. Plomer said, from either him or his Client to suspect Mr. Francis of dishonourable conduct; and though, as Mr. Hastings had said, such a suspicion might once have crossed his mind, yet he dismissed it then as ungenerous, and unworthy of him to cherish, even of his declared opponent. News, Mr. Plomer remarked, would quickly circulate. When a matter was debated in Council, it would get vent, and perhaps without blame imputable to any one. The Rajahs had their Vakeels about the Presidency constantly; it was their duty to ascertain the politics of our Government, and they did acquire them in some way. Hence, as Mr. Francis had well remarked, the incumbent necessity of unanimity in our Councils; for discordance or sentiment invariably damped the success of any measure proposed.

[During all this reference to Mr. Francis, that Gentleman was present.]

Accordingly, no sooner had this proposition of installment had time to travel to the Vakeel, than he altered his tone considerably—he offered “two lacs—three lacs—it was a great sum of money, and he was without power.” At length, however, the payment of four lacs 76,000 rupees was made, upon the threat of compulsory measures.

As the right to make the demand had been contested, so, the War continuing, in July 1779 the demand was renewed; and it was not resisted verbally. He had caught the hint of Poverty, and availed himself amply of its shield. “You know (adds he in a Letter) that I have sold my house, and pledged every thing I have that is valuable; but nevertheless I owe

my existence to the Company and will comply.”

Does he so?—Nothing was further from his intention. Mr. Graham writes, that he has been able to get no more than one lack of the Tribute, and he is convinced that unless force is used to compel the payment, it will never be done. Mr. Graham treats his plea of Poverty as idle, and ridiculously against the conviction of all who know him.

In consequence, Colonel Cormack's troops are ordered to march from Dinapore to Benares, to enforce the payment, and the Rajah pays another lack the day previous to their arrival, and the rest soon after;—thus having in four months speedily complied with the requisition of those to whom he owed every thing.

On the 12th of June 1780, the War still proceeding, the demand in Council is renewed, and the particular necessity of making it so early is stated by Mr. Hastings to be the desire he had of marching a detachment of troops into the territory of Madajee Scindia, and thus striking a blow that should distract the confederacy and power of the Mahrattas. This, it was well known, was a favourite object with Mr. Hastings; and Cheyt Sing well knew it to be so—it was one of those sure marks of vigorous policy that had contributed to the salvation of the British Possessions in India.

Cheyt Sing had just before the present demand, presented the sum of Two Lacs—whether as an intended propitiation for his former dilatory conduct, or with a view towards the annihilation of any renewal of the demand of the annual Five Lacs, cannot be long in doubt. Mr. Hastings had determined, as he told the Vakeel, *not to accept them*.

When, however, this his favourite measure against Madajee Scindia came before the Board, Mr. Francis and Mr. Wheeler opposed it, on account of the low state of the Treasury, which, so far from allowing them to form new enterprises and expensive operations, was inadequate to the current services. What then is the determination of Mr. Hastings? He revokes the purport of his former declaration to the Rajah, and resolves to accept the Two Lacs tendered by Cheyt Sing.

For the expediency of the measure he pledges his name and honour—he enters the Council, and observes immediately, “Your repugnance to my attacking Madajee Scindia arises from want of money—*there is the MONEY*, and now let me pursue my original plan.” The opposition

opposition is withdrawn, and the troops march—the usual demand is made upon Cheyt Sing, and, after the threat of an additional Lack, by way of fine, if he resist, he pays the amount, with the usual intervention of pauperly letters and periodical installments. On our part, proceedings to severe methods are crushed, and the fine threatened is heard of no more.

Thus then the learned Counsel proved *actual HOSTILITY*, instead of *pretence*; *DISAFFECTION* and unnecessary *DELAY* instead of *affection* and voluntary *assistance*; and the most *lenient FORBEARANCE* in the place of *preconceived MALICE*.

At six o'clock the Court adjourned to the Upper Chamber of Parliament, and resolved that the further proceeding upon the Trial be adjourned to the 17th of April: on which day, however, the Trial was further Adjourned to *

SEVENTY-NINTH DAY.

TUESDAY, April 24.

The Lords went into the Court this day about ten minutes before two, thirty-nine in number; and Mr. Plomer immediately resumed his speech, by a handsome acknowledgement of the attention with which he had been honoured, a regret that he had intruded so long upon them, and an apprehension that he must still request their indulgence. This he imputed to the nature of the cause itself; the Benares Article consisting, in fact, of a very great number of Articles, each im-

puting treachery, cruelty, and breach of faith, to Mr. Hastings. Sure he was, Mr. Plomer said, that it was for the interest of his client, and for the cause of justice, that each allegation should be most minutely and rigidly scrutinized, when all that remained would turn out as ill-founded as those which he had already gone through.—But knowing how valuable time was, and the impatience of all parties to bring this long-depending Trial to a close, he should very shortly dismiss all that had been done subsequent to the rebellion of Cheyt Sing, and confine himself to the five remaining heads of Charges prior to that event.

Mr. Plomer then began with the demand of cavalry. He proved how utterly contrary to the truth was the statement in the Articles of that transaction. In doing this, as in every part of his speech on the former days, Mr. Plomer exactly followed the line of argument adopted by Mr. Pitt when this Charge was before the last Parliament, refusing, as Mr. Pitt had formerly done, each allegation most completely.

It was stated in the Article, that, in order to harraßs and ruin Cheyt Sing, Mr. Hastings called upon him to furnish a body of Cavalry. Mr. Plomer proved, that this demand was earnestly recommended by Sir Eyre Coote, the Commander in Chief, immediately after the invasion of the Carnatic, and acceded to by the whole Council.

In this part of his speech, he kept close to Mr. Pitt's line of argument, praising

* From an account delivered by Messrs. Wallis and Troward, the Solicitors employed by the House of Commons, the expences incurred by the Trial to this period appear to be as follows:

Amount of Bill from the Commencement of the Prosecution to 1788

May 14, — — — —

8565 14 10

Ditto, from 1788 May 17, to 1788 Sept. 15. — —

2332 9 4

Amount of money paid to Witnesses, India Clerks, and Officers of the House of Commons, for Session 1788, as settled by the Managers, and allowed by the Treasury — — —

1782 1 6

Amount of Bill from 1788 Sept. 17, to 1789 July 14, — —

7652 15 6

Ditto from 1789 July 15, to 1790 June 9, — —

7782 1 4

Ditto from 1790 June 10, to 1791 June 6, — —

6984 13 11

Ditto from 1791 June 12, to 1792 March 8, — —

1860 6 4

£ 36,960 2 9

The above Account includes as well all Payments made to Witnesses, Fees on the Treasury Warrants, Payments to India House Officers and Clerks, to the Officers of the House of Lords and House of Commons, and Court Fees, as all Law Fees, Expences, and Charges. Of this sum they acknowledge to have received at different times in Cash by

Treasury Warrants, — — —

32,157 12 6

Balance due to Wallis and Troward — — —

4802 10 3

Mr.

Mr. Hastings, as the Minister had done, for his firmness and vigour at that moment of alarm and danger, when Hyder had overrun the Carnatic, cut off a third of our army, and when authentic advice was received of the departure of a large armament from France to co-operate with Hyder in the Carnatic.

Mr. Plomer noticed the fugacious plea, that the three thousand horse supported by the Rajah of Benares were kept for the purposes of tax collection; but this assertion he was at no difficulty to disprove, inasmuch as subsequent to his rebellion one hundred and fifty had been fully competent to collect such taxes, when the leisureable progress of peace had been disturbed and intersected by the convulsions of civil outrage, and the conflict of open hostility.

Mr. Plomer, as he went along, read the Minutes of Consultation for October and September 1780, and for part of November, by which it indisputably appeared, that no human ingenuity could, with the shadow of reason or common sense, have imputed this demand of cavalry from Cheyt Sing to malice, or to a design to ruin him; but on the contrary, at a moment when it was a question whether we were not as near losing India as America, the General is desired, before he goes to Madras, to form an arrangement for the protection of Bengal, Bahar, and Orissa; and the General recommends the application to Cheyt Sing for cavalry, a proposition which the Board unanimously adopt. "Yet," said Mr. Plomer, "though all this was as clear when the Charge was drawn as it is now, Mr. Hastings is made the sole author of the demand, and his conduct is imputed to the worst of motives."

The Rajah Cheyt Sing had been represented in the Charge as a Zemindar punctual in the payment of his monthly kists and subsidies, and therefore the last to merit the oppressive exactions and rigorous punishments of the Governor-General; and to support this allegation, the *Annual Journal* enregistering the Benares paymen's had been quoted and produced; wherein every month was seen duly qualified with its opposed payment; but Mr. Plomer effectually proved, that these Year Books were but annually made up, and then the sum total being, at no matter what periods, received, each month *pro forma* had its duodecimal quantum annexed.

But it being sufficiently known, that the payments of the Rajah were not thus regular, that the kist of November had been paid only in December, that of December in January, and soon, the Managers for the Prosecution had set up a defence grounded upon usage, That a month's intervention was a thing of course, and that one month paid under another was all that was to be expected by the Government from the Zemindaries. Mr. Plomer denied this ever to have been the custom of India, and appealed to the collective experience of all who had ever resided there.

Mr. Plomer then examined, with great acuteness, the pleas of inability set up by Cheyt Sing, and ascribed his conduct to its true motive, disaffection. He stated the perilous period in which his assistance had been withheld, in strong colours.—When Hyder Ally, with resistless devastation, was sweeping the Carnatic, and all the hopes and strength of the Presidencies centered in Calcutta—When Cormack's detachments suffered so severely, and Colonel Baillie's corps were miserably slaughtered, or captured—at this time it was, that hardening his heart, and relying upon his wealth, he had temporized with demand, and ambushed his strength; that he excited rebellion in the sepoys, and purchased muniments from the French; it was then that he exulted in the silent hope of our total extermination.

Conversations had been reported, in which the Begums of Oude had strengthened his prejudices, and lined him with confidence; in which they had urged the general design to dispossess us of India, and bade him rely in contumacy upon the confederacy against us.

At length, upon Mr. Hastings's arrival at Benares, he found this hypocritical rebel unusually fortified, and powerfully armed, the very weapons purchased of the French, which his pretended loyalty was to use against them; and of the 22,000 men in arms, of which his main body consisted, 1000 men furnished, in consequence of the above idea, by the peaceful and well-affected Princesses of Oude.

Here Mr. Plomer came to a most critical and momentous part of his speech, which he managed with infinite delicacy, but with extraordinary force—we mean the amount of the fine proposed to be levied upon Cheyt Sing—namely, forty or fifty lacks of rupees. He alluded to the peculiar

peculiar situation in which Mr. Hastings stood; impeached, in the name of the House of Commons, for a variety of oppressive acts against a meritorious individual, as Cheyt Sing was stated to be; yet great authorities contending, that all the acts done by Mr. Hastings were most strictly justifiable; that the delinquency of Cheyt Sing was great; but that the intention to punish that delinquency by so large a fine, was a high crime and misdemeanor.

Mr. Plomer contended, that it would be absolutely impossible to fix a crime upon Mr. Hastings for the intention, unless it should be proved, as was alleged in the article, that Cheyt Sing was called upon for subsidies in three successive years, and for cavalry, and for obedience to orders, in direct contradiction to solemn treaties. In that case, he allowed, that to intend to punish a man for not complying with illegal demands, would be a gross aggravation of the original crimes.

But what was a fine of one year's gross Revenue, if it even had been levied, to expiate such treacherous duplicity? But the most miserable internal depravities had marked him unfit to govern. The sacred city of Benares had been polluted by unaccounted-for deaths, and all the savage additions that inventive cruelty could contrive to garnish the horrid feast of murder. Bodies found in the streets had been piled up by the suffering relatives before the door of the English Resident, and thence transported to the Rajah's Palace, to move him to redress the licentiousness of his Capital; but in vain—the representations of Mr. Malcolm, and the sight of his sacrificed subjects, were alike disregarded, and this merciless slave lorded it, in the web of his conspiracy, over the oppressed he had sworn to protect.

Mr. Hastings indeed, from whose profress the most benevolent effects flowed, had new modelled the police of the Zemindary; he had given them a code so wise, so mild and benignant, that the inhabitants, by his munificence restored to civil order, blessed him in the regenerated comforts that flourished around them.

Mr. Plomer then touched upon the superciliousness of Mr. Fowke by Mr. Malcolm, and proved the insinuation of the Managers utterly groundless.

He then was about to examine the alleged stretch of power, in the Governor General's removing from Calcutta.—He

PART V.

examined the Law of 1703, when the were two Companies; that of 1753, and that also of 1773—he drew inference from the late powers declared to be vested in Lord Cornwallis favourable to his Client, and was proceeding, when

The Lord Chancellor asked if Mr. Plomer would be able to finish on that day?—Mr. Plomer replied, he feared not; nevertheless, he was prepared to proceed as long as their Lordships would favour him with their attention.

The Chancellor told him he had better take another day to close; with which Mr. Plomer complied readily, it being near five o'clock.

EIGHTIETH DAY.

THURSDAY, April 26.

Mr. Plomer, soon after one o'clock, drew the attention of their Lordships to the allegations made against Mr. Hastings touching the journey to Benares, and the transactions subsequent.

Mr. Plomer established beyond controversy the rebellious intentions of Cheyt Sing, and then proceeded to examine the arrest of his person, upon which so great a stress had been laid by an Honorable Manager. The learned Counsel shewed, that the circumstance of arrest could contain nothing peculiarly wounding to an Indian mind, as it had been the customary mode of procedure in the Company's dependencies.

After quoting various precedents, he said he would mention one which was fully sufficient for his purpose.

The Rajah of Burdwan, a man of much higher rank and distinction than Cheyt Sing, had, in the year 1788, neglected to obey an order sent by Lord Cornwallis and his Council, for the transmission of some accounts to Calcutta. For this disobedience they fined him five thousand rupees; and unless that fine was paid in five days, they ordered his person to be arrested, which was done. They then sent a second order, directing, that if in twenty-four hours the fine was not paid, the Rajah should be sent a prisoner to Calcutta.

No man, Mr. Plomer said, could believe Lord Cornwallis would have issued such an order, if the arrest of the person of a Hindoo Rajah could be attended with all that disgrace which the Managers had supposed to be attached to it.

The messenger sent to Cheyt Sing, it seems, had been an aggravation of the indignity; the *Chubdar*, it was stated,

D

was

was a man of the lowest caste, and such as it was infamous to dispatch for the purposes of communication, particularly at the sacred hours of ablution and prayer. How this could be established, Mr. Plomer was at a loss to say—the *Chubdar*, or Bailiff, was in the practice of conveying the sentiments of the Resident to the Rajah—he was a venerable man, some 60 years of age, and a Bramin. The Rajah had always sent his *Chubdar* to Mr. Fowke and Mr. Malcolm, and therefore the man's degradation was not so visible as had been stated.

The poor fellow, however, was cut down by the indignation of the Rajah's people; and then it was discovered, that the two battalions of our sepoy's were without ammunition. Cut off thus entirely from assistance, popular fury massacred them without mercy, and the Chief of this ungovernable people made his escape.

But nothing was more false than that this was an ebullition of popular resentment; his people were not within sight of the transaction. The fact is, the murderers were the picked and chosen troops of the Rajah, commanded by his relations, and, no doubt, drawn thither and instructed for the purpose.

The next alleged crime in Mr. Hastings was, that he had been deaf to explanation, and refused to attend to the Rajah's exculpatory letters. Mr. Plomer said, if Mr. Hastings had attended to them, he should have been indeed at a loss for a word in his justification; for at the time this mean and servile farce was playing to lull Mr. Hastings into a fatal security, he had issued his orders to massacre every European that could be found, whether in arms or not. One merchant in vain pleaded the pacific nature of his profession, and he was pitilessly sacrificed; and fourteen unhappy men were brought forth nearly starved, in their deprivation from sustenance, to endure the tantalizing torment of offered food which they were not permitted to touch; and then, when the warrants for their death were sealed, they expired under lingering pangs, and suffered the piecemeal annihilation limb by limb.

He then considered the measures taken subsequent to the rebellion; and he expressed his astonishment at the singular mode in which the Article was drawn. It was stated as a crime in Mr. Hastings, that when all the province of Benares was recovered, except Bidjgur, he should have ordered that place to be besieged,

which was called, in the Article, the residence of the family of Cheyt Sing. It was, Mr. Plomer said, one of the strongest fortresses in Indostan. It was taken, and no person could have acted, after it was taken, with more humanity or justice to those ladies than Mr. Hastings did; inasmuch that he received their warmest thanks for his attention to them.—Mr. Hastings had been censured for inhumanity to the Ranny, 'mother to Cheyt Sing; but from this plea Mr. Plomer effectually barred out his accusers.

With regard to the expulsion, and the substituted Raiah in the Zemindary of Cheyt Sing, Mr. Hastings had in no wise offended local prejudices in the appointment of his successor, who descending legitimately from an unforfeited caste, was by most deemed already the legal inheritor from Bulwant Sing.

He then adverted to the Charge of oppressive Duties. It seemed that a very absurd mode had prevailed of taxing commodities by weight, to that an article of 50*l.* value, and one of 5*d.* if the weight was alike, paid the same duty. Mr. Hastings had placed in lieu of this absurdity, a five per centage *ad valorem*; but finding that this would bear hard upon certain articles, such as *mace*, *silk*, &c. &c. he had lowered it one half, leaving it at two and a half per cent. Thus having lifted off an oppressive and idle tax, and imposed a rational and easy levy, by which the revenues were improved, and the commerce of the country essentially benefited, Mr. Plomer expressed his wonder that it should be deemed criminal in Mr. Hastings to raise the public revenue from 230,000*l.* to 400,000*l.* a year, which he had done, and which had been regularly paid ever since. In addition to this he had established a police in the city of Benares itself, which had raised the credit of the British Government throughout all Indostan, and had occasioned the resort of thousands to that holy city, who under the old Government would not have approached it.

After answering and repeating every division and sub-division of the Charge, Mr. Plomer made a very short but a most impressive close. He desired their Lordships and the British Nation to consider the nature of this Article.—More than ten years ago Mr. Hastings, for reasons that appeared to him conclusive, had expelled Cheyt Sing from the Zemindary of Benares. Having so done, he formed a new arrangement, by which the public had received One Million Seven Hundred
Thousand

Thousand Pounds more than they would have done if there had been no revolt.

What reason upon earth was there, Mr. Plomer said, to exclude those who had the power to order the restoration of Cheyt Sing, from doing so, if they thought that year after year Mr. Hastings made demands upon him contrary to solemn treaties, and at last expelled him for the resistance of illegal demands? There was none, there could be none. But he acquitted the nation. The acts of Mr. Hastings were justifiable, and the nation had a right to the advantage he had procured for them.

Mr. Plomer again apologized to the Lords for the length of his speech; but he hoped they would excuse it, since he had to go through an Article containing a great number of allegations, not one of which, as he affirmed, was founded in truth. Most of them were disproved by the evidence adduced by the prosecutors themselves, and the remainder would be by the additional evidence which he should lay before their Lordships. Yet such was the Charge, and Cheyt Sing was the hero whom the Managers had pushed forward; and his client, Mr. Hastings, the acknowledged preserver of India to Great Britain, had suffered so long a trial under such a Charge, and in which such a character as Cheyt Sing was the principal figure.

Mr. Plomer concluded about half past four, and the Court adjourned.

EIGHTY-FIRST DAY.

TUESDAY, May 1.

The Court met at half past one, when the Counsel for Mr. Hastings immediately proceeded to adduce evidence in refutation of the allegations on the Benares Article. They proved that Bulwant Sing, the father of Cheyt Sing, so far from being attached to the English nation, was, in fact, hostile or friendly just as the events of war turned out; promising to assist them when their affairs were favourable—and hostile, on the first prospect of a change of fortune.

After an hour's reading, the Counsel proposed to call Lord Stormont, who was accordingly examined. After the form of taking his examination was settled by the Court, his Lordship delivered his evidence with the utmost clearness and solemnity. We shall state, to make it more intelligible, the point to which his

Lordship was called. The Article states, that Mr. Hastings, in positive contradiction to the treaties subsisting between the Company and Cheyt Sing, and with a view to harass, distress, and finally to ruin him, in consequence of preconceived malice, did, under a pretence of a war of which he had received no authentic accounts, order the Rajah to furnish three Battalions of sepoyas.

It may be observed, that when this allegation was first made, Mr. Pitt treated it with the utmost indignation, and accused Mr. Burke of great injustice, in stating that to be a crime which was an act of the highest merit. But the wisdom of Parliament voted it to be a crime in 1787, and in 1792 Mr. Hastings is called upon to refute it. For this purpose Lord Stormont was called, who stated, that when he had the honour to serve his Majesty as Ambassador at the Court of France, in the year 1777, Mr. Alexander Elliot came to Paris, on his way to India; that Mr. Elliot was a Gentleman of the highest character, though till then not personally known to his Lordship: that, from conversation with him, he found the Directors were not acquainted with some very important intelligence relative to the projected design of the French upon India, which had lately come to his knowledge. There was no time to write to England for orders. He therefore took upon himself to communicate this intelligence to Mr. Elliot, under the strictest injunctions of secrecy, permitting him, however, to state the substance of the intelligence to the Supreme Council, and his authority to Mr. Hastings and Sir John Clavering only: that he was well convinced, whatever political differences subsisted between Mr. Hastings and Sir John Clavering, they would most cordially unite in obstructing the important designs of France upon India. Mr. Hastings he had never seen since they parted at Westminster school; and with Sir John Clavering he had been very intimate before the latter left England.

Lord Stormont then read the information which he communicated to Mr. Elliot, as written by that Gentleman to the Board. It was in substance—That a plan had been formed by M. Sartine, and the Ministry of France, to overthrow the British power in India; stating very fully the steps France meant to take before war should actually be declared, and what was afterwards to be done. Lord Stormont said, though he could not positively swear

to the exact words, yet he was clear there was no difference in the substance. This was the intelligence that left Mr. Hastings in no doubt how to act; and a few months after, Mr. Baldwin, from Cairo, sent him an account that war against France had actually been declared.

Upon this intelligence he acted—increased his military force, and took all the French Settlements in Bengal; acting in these instances, as Mr. Pitt stated, “with a firmness and decision which more peculiarly marked his character than that of any other man.” Yet the Commons of Great Britain, in the year after this eulogium was pronounced, charged this decision to be a crime, and that he *pretended* a menaced war, merely to ruin Cheyt Sing!

The Counsel then proceeded to fill up the chasms left in the evidence by the Managers, substantiating the several assertions in Mr. Plomer’s opening speech.

The Court adjourned a few minutes before five.

EIGHTY SECOND DAY.

THURSDAY, May 3.

The Counsel for Mr. Hastings proceeded with written evidence in support of the defence to the First Article of this Charge. Mr. Burke, after several times enquiring of the Counsel in what manner they intended parts of their evidence to apply, observed to the Court that the Managers, both to save time, and to allow Mr. Hastings all possible advantages in making his Defence, declined formally objecting to many things which to them seemed incompetent evidence. It was therefore for their Lordships to consider how far the admission of such evidence would operate as a precedent on future trials; and after this intimation from the Managers on behalf of the Commons, to take care that nothing should be done to prejudice or invalidate the established rules of evidence of the Court.

Mr. Law said a few words in explanation of the evidence alluded to.

Mr. Plomer had produced in evidence a letter of Major Cormack, containing two extracts from letters written by officers, explaining their situation.

Mr. Burke asked, what evidence could be produced to prove that those were the individual inclosures?—A long altercation took place, in which Mr. Burke was told by the Lord Chancellor, “That if the letter described in any way the purport of such enclosed papers, and their contents answered such description, it was a rational inference that they were the papers

alluded to. To insist upon proof was idle; for none could be had, unless some one saw the Governor General open Cormack’s letter.”

Mr. Burke complained of difficulties thrown in the way of the Managers; and insinuated that similarity of proof was not allowed them.

Mr. Fox took part in this unimportant scuffle; and Lord Stanhope spoke very conclusively upon the subject.

The Chancellor referred to the acceptance of invoices as evidence, coming inclosed, if their description was clear in the letters enveloping them.

Mr. Law then proceeded to state a variety of collateral proofs, that the British Settlements were all deeply distressed at the time of Mr. Hastings’s demanding this subsidy of Cheyt Sing.

Mr. Burke here took another ground of objection. He did not conceive the propriety of producing such testimonies of distress, unless it was meant to be inferred that they resulted from the contumacy of the Rajah. “Notwithstanding, my Lords (said he), the Managers have not the smallest doubt of the general calamities attending the government of Mr. Hastings.”

Mr. Law, with very superior temper indeed, told him, that they considered this evidence as perfectly relevant to what it was brought to prove, viz. that these circumstances known, aggravated the guilt of the rebel who could thus

—“desert us at our utmost need.”

Then the Right Hon. Manager wanted proof that Cheyt Sing knew all these calamitous circumstances.

Notwithstanding cavil, the evidence proposed was gone through.

EIGHTY-THIRD DAY.

WEDNESDAY, May 9.

The first part of this day was employed in entering papers, which proved the inattention of Cheyt Sing to the duties of his office, and also his disaffection. Mr. Plomer then opened certain evidence, which, to the general conviction of men out of doors, has always appeared to be a full answer to the Charge. He called one of the Secretaries at the India-House to prove that the accounts of demands made for three successive years for subsidies in war, and for cavalry also in the last year, were regularly transmitted by Mr. Hastings and his Council to the Court of Directors, and by them, agreeably to law, to his Majesty’s principal Ministers. It appeared that no sort of objection to the propriety and justice

tice of these demands was made, either by the King's Ministers or the Court of Directors: It appeared also, that subsequent to each of these demands, Mr. Hastings was re-appointed by the Legislature to be Governor General of Bengal; yet he, and he only, stands now impeached for having made these demands, contrary to the solemn treaties, stipulations, and engagements subsisting between the Company and Chyett Sing.

Mr. Burke, in the subsequent part of the proceedings, made several objections, which, however, he declared he meant not to be objections. As far as we understood him, he contended, that though, as a Manager, he had a right to put in evidence *against* Mr. Hastings certain documents, the Counsel had no right to read that same evidence again, *as for him*.

After some further disputes, Lord Fitzwilliam moved to adjourn the Court, in order to determine the point, which was instantly given in favour of the Counsel.

EIGHTY-FOURTH DAY.

THURSDAY, May 10.

After completing the reading, the Counsel called Major Osborne to the Bar, who had served in India seventeen years, dating from 1765, and, after a very interesting examination of three quarters of an hour, established many important facts—That Chyett Sing had been notoriously negligent as to the police of his Zemindary; that robberies and murders were frequent, but that no redress could be procured from Chyett Sing by the injured parties: that he had himself made complaints, but could obtain no satisfaction—That he firmly believed Chyett Sing was disaffected—That it was certainly agreeable to the usage and custom of India to call upon Zemindars for military force and subsidies in war—That, beyond all possible dispute, the British Dominions in India were better cultivated, more populous, and justice was better administered, than in countries under the native government—That the Hircarrahs or spies of Major Osborne, who commanded in the Naob's country situated contiguously, reported a body of 10,000 horse in his interior dominions; the number, however, Major Osborne confessed he did not give credit to, from the usual accumulations of rumour, and the difficulty to arrive at the number of troops in the field where regular returns were unknown—That under Mr. Hastings's administra-

tion the British dominions had considerably improved in agriculture and population—That this remark was universal, except as to a small part of Bahar, called Booglepore—That Mr. Hastings was very highly esteemed by natives of all descriptions—That he had conversed with many in Oude and Bengal, and all spoke in the warmest terms of him—That his character was directly the reverse of that stated in the Articles; and that, neither as a public or a private man, did he believe him capable of oppression, tyranny, cruelty, injustice, or bloodshed.

After this full and explicit evidence, in positive contradiction to assertions in the Articles of Impeachment, Mr. Burke began his cross-examination, by demanding to know, "Whether the Nabob Asaph ul Dowla had not declined the personal services of the Major?" The question being repeated again and again,

Mr. Law rose to reprobate the circuitous mode in which the Right Hon. Manager pursued his enquiries—he always went in a *circle*, and never in a *right line*. Mr. Law thought that they owed it to their *common* character ("*Common!*" angrily rejoined the Manager!) not to impede the course of justice by unnecessary delay.

Lord Stanhope laconically asked, what all this had to do with Mr. Hastings?

Mr. Burke rose with great warmth—"My Lords, I do not conceive, it being here as I do, delegated by the Commons of Great Britain, to support a charge of High Crimes and Misdemeanours, that any man living, less informed upon the subject, has a right to prescribe to Managers the mode of their interrogations. If our conceived privileges are denied, my Lords, we will go back to our masters who sent us, for fresh instructions. The very nature of cross-examination forbids it to be direct—the circuitous application was needed to worm out the latent object of the query: and the reason for us being proposed, could be only known to them by whom it was offered.—I never can suffer the dignity of the House of Commons to be implicated in the *common* character of the bar: the learned Counsel may take care of his own; we know the importance of our function, and will exercise that function to the best of our abilities, nor shall any power upon earth prescribe to us our conduct in the performance."

Mr. Wyndham said, that after the able notice taken by the Honourable Manager of a question extremely clear in itself, he should

should only venture to express his hope, that their Lordships would not establish in the case of the Commons of England a rule hitherto unknown in all other cases, subjecting the party cross-examining to any controul, or to any exposure of his motives. The duty of a cross-examiner was inconsistent with such controul or exposure; and even if he was to receive directions, they surely ought not to come to him from the opposite party.

It was not only true, that a circuitous mode of interrogation was to be permitted to cross-examiners, but that the end of cross-examination could not be obtained without it. It was not only fair to put questions of which the immediate object could not be foreseen, but it was essential to contrive so as that this object should not be apparent. Those only could know whether such questions were relevant or not who had an entire knowledge of the cause, which a Court could not be presumed to have till it was tried; the persons conducting the cross-examinations were therefore to judge for themselves.

The Chancellor directed the witness to answer the question.

Major Osborne did not clearly recollect the affair enquired into; and having made some answers which the Managers thought not satisfactory, the latter were proceeding to put other questions, when the Court adjourned.

EIGHTY-FIFTH DAY.

TUESDAY, May 15.

The Lords being seated, and the Managers in their places, Major Osborne came to the Bar, and having heard the last question and his answer thereto read, was again questioned relative to the Nabob's having ever, to his knowledge, preferred complaints against him to the Governor General and Council.

To the same query put into a thousand vermicular positions, the witness gave one and the same answer—He knew of none. He had the Nabob's thanks and praises for the services he had rendered him.

Mr. Burke then desired to know, whether complaints had not been preferred against the troops, for their seizure of the public gunges, or markets? Major Osborne knew nothing but of one gunge, and it was that farmed by himself, for which he paid the rent, and had the receipt to shew. These gunges were called, out of compliment, by the names of some places of Commander, or distinguished personages;—there might be Mr. Burke's

gunge or market there, for aught he knew.

Except Ajut Sing, whose forts the Major had taken, and whose armies he had beaten, he knew of no other complainant.

Mr. Fox was present, but did not interrogate the witness; so Mr. Burke elicited from the Major his conclusive simile of a *Mongoose*.

Major Osborne was extremely clear and collected, and closed his evidence by a reply to two very important questions proposed to him by a Noble Lord: The first, "Whether there ever appeared any thing in the conduct of Mr. Hastings to Cheyt Sing, that indicated malice towards the latter?" The answer, "Certainly not." The next question was, "Whether the conduct of Mr. Hastings indicated partiality towards him?" The answer, "Certainly—Mr. Hastings was partial to Cheyt Sing, and it was his universal character to all the natives, as was very well known to all who had been in India."

Mr. Markham was then called on the part of the Defendant, and examined by Mr. Plomer, whose very excellent statement of the transactions at Benares seemed but a rhetorical copy of this testimony.

All that struck us materially on either side was, that in Mr. Markham's way to arrest the person of Rajah Cheyt Sing, he saw no indications of hostilities, no appearances of troops; and that, on the contrary, he affirmed the Chubdar sent by Mr. Hastings and himself to the Rajah, instead of being one of the vilest of mankind, was a Bramin, and a man of an higher caste than Cheyt Sing himself.

He spoke of the disobedience of Cheyt Sing—the bad police of his country—the forbearance of Mr. Hastings—and ultimately of the desperate resistance made by his troops, regular forces—not a rabble or populace, as stated in the Article. He said, that Cheyt Sing was faithless; that he suffered every species of outrage to be committed within his Zemindary; and that he actually countenanced the murder of the Subahdar, Captain of the recruits which were on their march to Illahabad.

Q. How was he informed of that murder?

A. Two Hircarrahs came with the tidings, and brought his head in a bag. I could not have a more substantial proof.

A great number of other questions were propounded and answered.

While Mr. Markham was detailing the transactions at Chuballa in one connected

needed narrative, Mr. M. A. Taylor demanded to know, if the witness was present; if not, all this was not evidence?

Lord Stanhope justly remarked, that as far as it communicated particulars of Mr. Hastings's conduct, and Mr. Markham's, it was undoubtedly evidence. Leaving Mr. Markham going up with the Governor-General to *Cbunar*, the Court broke up.

EIGHTY-SIXTH DAY.

WEDNESDAY, May 16.

The Court met about twenty minutes before two. The Counsel of Mr. Hastings went through their examination of Mr. Markham. That Gentleman delivered his evidence with a perspicuity and candour which did equal credit to his head and heart. In speaking of Ally Ibrahim Cawn (a man whom Mr. Burke had mentioned with every circumstance of opprobrium, in some of his printed speeches, and as a man whose appointment to the office of Chief Magistrate of Benares had occasioned general disgust) Mr. Markham said, perhaps he was as well calculated to fill that high office as any Chief Justice in any country: that his appointment had given universal satisfaction, and he believed that the police of no city upon earth was so well regulated as Benares, from the time that officer was appointed unto this day, for he still filled the office: that Mr. Hastings had abolished oppressive exactions; and that his arrangements had tended to the encouragement of pilgrims to resort to Benares from all parts of Indostan; and to the general happiness of the people. There were very many other important points in his evidence, each tending totally to cut up the Article as presented by the last House of Commons.

Mr. Plomer demanded to know the witness's opinion of Cheyt Sing? Mr. Burke came forward—"Really, my Lords, we must object to this species of evidence; to every *round* in the whole *sein* of it. We are sorry to be obliged to state, that it is a waste of the time of this Court, irregular, and perfectly inadmissible."

The Lord Chancellor thought a subsequent question, as to the *grounds* for such opinion, would produce evidence strictly proper.

Mr. Fox, with much acumen, remarked, that the grounds of this opinion were hear-say occurrences; one man told him *this*, and another *that*, and that the *cause* might be opinion *alio*.

The Court assented to this proposition, and the Counsel waved the interrogation.

The evidence then continued with tolerable smoothness through the conduct of Derbidzy Sing, until Mr. Plomer demanded to know, whether Mr. Markham thought him able to pay his kists, if he chose to do so? Mr. Markham—"I certainly did think so."

On the part of the Managers, the former objection recurred, and the *causa scientia* was again demanded—"I judged so from his papers; I have extracts from them."

Mr. Fox thought this evidence also inadmissible, as a recollection of particulars, seen long since in papers, was the most uncertain of the operations of memory.—Waved also.

Mr. Markham finished about half an hour past three; when Mr. Burke got up, and said, he was not ready for the cross-examination; that he was himself exhausted; that he supposed the witness was fatigued too, and he wished the Lords to adjourn.—There was instantly a general cry of—*Go on—Go on*—Mr. Burke hesitated, and then said, if the Lords *insisted upon it*, he would proceed—and then he put a question to Mr. Markham.

The Earl of Derby was sitting close to the Managers box, and went from thence to the table, and spoke to the Lord Chancellor, who desired Mr. Law to proceed with written evidence, if he had any.

Mr. Dallas said all was given in, except one paper.—Mr. Law stated the substance of that paper, and called Mr. Wright to substantiate it, who was not present.

The Lord Chancellor then said, he did not see how the Court could proceed, with the civility due to the Managers, if they were not ready. Mr. Burke made no reply, and a motion was made to adjourn. To this Mr. Burke submitted, and the business ended, the Court being adjourned.

EIGHTY-SEVENTH DAY.

TUESDAY, May 22.

The Lords came into the Hall about half past one o'clock, and the cross-examination of Mr. Markham immediately commenced, conducted by Mr. Anstruther, assisted by the whispered suggestions of Mr. Burke. Messrs. Fox, Wyndham, and Taylor, were present occasionally.

Mr. Markham sustained an examination of four hours and a half, with a collected power that not only furnished the best possible answers to the queries, but frequently

frequently surprised us, by an acute detection of the latent purpose of a question, and, where it was too general, pressing for its limitation.

He was asked (for we avoid all unimportant reference) what Cheyt Sing was looked upon to be by his People? "As a Zemindar," was his reply. He then was questioned as to the idea his subjects must have had of his arrest? Mr. Markham looked upon it as susceptible of no greater disgrace in opinion there than here: and he instanced the Duke of Marlborough being put under arrest, and sent to the Tower by William the Third, as a parallel case.

Mr. Burke good-humouredly corrected his historical error, by saying, he was *not* Duke of Marlborough in the reign of William the Third.

The subject of the interrogations then went to get from the witness, that Cheyt Sing was, as a Zemindar, possessed of princely privileges—military, civil, and judicial. Mr. Markham affirmed, that he had not entirely military authority, for that Chunugur contained a considerable body of our troops. It was established however by the Managers, that the Fort of Chunar, although geographically within the Zemindary, was not in his jurisdiction; the Circars around it were. It resembled, for instance, Gibraltar, which might, in a similar way, be termed a part of Spain, though out of the sovereignty of that nation.

The next question was, Had any Zemindars in Bengal equal privileges with Cheyt Sing? They had not. Do you know whether the *subjects* of Cheyt Sing considered him anything like a Prince? I know nothing of the opinion of a *whole* People; and *anything* like a Prince, is too indefinite. "Anything, for instance, like the Prince of Wirtemberg?" The Prince of Wirtemberg I have never seen.

Mr. Anstuther put a great variety of questions to Mr. Markham, relative to the conversation which passed between Cheyt Sing and Mr. Hastings at Buxar. Mr. Markham's answers were very explicit; but at last he discovered that the Manager had taken his ideas of this conversation from a forged paper, which had been circulated in Calcutta some ten years ago, under the false name of Cheyt Sing's Manifesto. Mr. Markham treated this paper with much contempt, and positively declared his own conviction that it was a forgery. Such we understand to be the opinion of every Gentleman in any degree conversant in the affairs of India.

Yet Mr. Doddsley, in his Annual Register for 1782, states it to be an authentic paper. —Such is the sort of judgment to which men in great public situations, in the most trying moments, are subject! for Mr. Anstuther seemed to agree with Mr. Doddsley as to the authenticity of this forgery, though the Managers never attempted to give it in evidence. Mr. Markham however gave it a death's blow.

Mr. Anstuther closed his first head of interrogation here; and the Court rose.

Being a Lawyer by profession, we have no doubt but that all his questions tended to some material points in behalf of the prosecution; but to plain understandings these points were not easily perceptible. — The answers were in every part clear, unequivocal, and direct. It would be tiring our readers were we to abstract the questions, though the answers turned out often very important, and, as far as appeared from the feelings of the auditors, highly in favour of Mr. Hastings.

EIGHTY-EIGHTH DAY.

WEDNESDAY, May 23.

Mr. Markham again submitted to a cross-examination by Mr. Burke, Mr. Anstuther, and then Mr. Burke a second time. An infinite variety of questions were put by the Managers respecting the Benares Charge, the revenues of Cheyt Sing, and the proposed fine of 50 lacs; and the witness was arithmetically led to admit the revenues of Cheyt Sing incompetent to its discharge. He was then asked what resources he was imagined to be possessed of by Mr. Hastings, that might enable him to answer such a requisition?—The answer naturally was, his private amassed property, as well inherited from Bulwant Sing, as accumulated by himself. He acknowledged, however, to have had the information from a man inimical to the Rajah. A multiplicity of other queries touching the appointment of Naib followed, in which the Managers laboured to establish, that an enemy to Cheyt Sing had been nominated by Mr. Hastings, and that the arrest of Cheyt Sing *did* dissolve the Government; a circumstance denied by Mr. Hastings.

To a question, "By what authority Mr. Markham arrested Noodajee Sing?" the witness replied, that he did not understand it; but when it was repeated, said, that the arrest of Noodajee Sing was his own act, for which he was responsible; his conduct, however, was approved by his superiors, and that he considered as his justification."

Mr.

Mr. Burke did not wish the witness to criminate himself, but he must enquire by what authority——

The Chancellor—"The witness tells you it was his own act."

Mr. Markham—"It was not from my own personal motives. I believe there never before was any such authority; but I did it from a conviction of its expediency."

This was a tedious, flat, unprofitable, and, we should have said, *unimportant* day, were we not aware that, as Mr. Antruther remarked, the *IMPORTANCE* of the Questions was *only* known to the Managers. To us, however, the questions appeared tedious and uninteresting, and calculated to answer no end whatever except to puzzle, perplex, and protract. The Court adjourned to

EIGHTY-NINTH DAY.

WEDNESDAY, May 30.

Mr. Markham was again called to the Bar, and his cross-examination was completely finished on this day, but attended with some circumstances of so peculiar a nature, that we are convinced it will be gratifying to the public to state them more at large than we have hitherto done.

Before he replied to Mr. Burke's first question, he informed the Lords, that a few minutes before the Court assembled, he had received a letter from Mr. Burke, informing him that Mr. Markham had written to his father, the Archbishop of York, above ten years before.—It appeared, that in consequence of the very close intimacy and friendship which had subsisted between the Archbishop and Mr. Burke in former times, his Grace had, upon the receipt of this letter from his son, given it to Mr. Burke at Court in the year 1782, immediately after the receipt of it; that Mr. Burke had kept it ever since that time, and had *accidentally* found it on Saturday last, and returned it to Mr. Markham with a very polite note just before they went into Court yesterday.

Mr. Markham, with the openness and sincerity which ever marks a man of real character and honour, who has nothing to conceal, begged that his letter to his father might be read. It was read, and in every point of any importance agreed *exactly* with the evidence that he had given, though it was singular enough that Mr. Burke had cross-examined him for two days, just as a man would have done who had studied the letter to the Archbishop,

PART V.

which letter Mr. Burke had never seen, as he assured the Court, from July 1782, until he found it, in May 1792, by accident.

The jet of the examination turning upon Mr. Markham's financial competency for the Residency at Benares, Mr. Burke demanded Mr. Markham's age at the period of his accepting that trust? That Gentleman answered jocularly, that he was born on the 5th of April 1760, and in consequence must have been twenty-one; "but," added he, "my Lords, I do not conceive this a fair question."

Mr. Burke returned—"As Mr. Markham even yet is young enough for marriage, the question will assuredly not spoil his fortune." This the Lord Chancellor passed by with becoming *gravity*, amid the *laughter* of the *Ladies*.

Mr. Markham went through a very long cross-examination, the longest, perhaps, ever known or heard of; but each answer served to fix his former testimony the more strongly, and to confirm every assertion made by Mr. Pitt, in his speech upon this Article in the House of Commons.

The close of his examination was singular and striking, and appeared to affect the Court and the auditors, as much as it did Mr. Markham himself. He was asked, if there was any part of Mr. Hastings's conduct to Cheyt Sing that appeared to him as resulting from vindictive, malicious, or interested, motives? He replied, that he had known Mr. Hastings for many years most intimately, and was convinced, that in no part of his public conduct was he biased by vindictive, malicious, or interested motives; that he was convinced he had ever made the public good, and the honour and advantage of his country, his first object; that on himself or his own interest he never bestowed a thought; and with a voice scarcely audible (probably from the reflection that such a man should have been so treated by a combination of parties against him), laying his hand upon his heart at the time, he added, "I am convinced, my Lords, he is the most virtuous man of the age in which he lives."

After this evidence Mr. Burke, with evident marks in his countenance of a man who felt that Mr. Markham was *believed* by every Gentleman present, proceeded to a few questions, none of them of any consequence, and then Mr. Markham was dismissed.

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The Court at half past five adjourned until Wednesday next.

NINETIETH DAY.

WEDNESDAY, June 6.

The Court met at half past one o'clock, having been detained some time in the expectation that a few Managers might arrive. Mr. Burke was the only one present when the House was made, and the particular and earnest application of Mr. Hastings to individual Gentlemen procured a House about one o'clock.

Four Gentlemen were examined, viz. Lieut. Birrell, Colonel Blair, Charles Grame, Esq. and Lieut. Wade. The evidence of these Gentlemen was decisive as to several points of the utmost moment in the two important Articles, *Benares* and *The Begums*.

They all stated the delinquency of Cheyt Sing, his state of preparation, and his apparent determination to assert his independence at the first favourable moment.

These Gentlemen also spoke of the assistance afforded to Cheyt Sing by the Begums, as a matter of which no doubt was ever entertained in India—that they believed it then, and believed it now.

They also spoke of the universal estimation in which Mr. Hastings's character was held throughout India, by natives and Europeans, both before and since this prosecution commenced.

Captain Wade underwent a long examination relative to troops daily passing by his station, near Muzapoor, for two months immediately preceding Cheyt Sing's rebellion, coming from the Independent States S. W. of the Zemindary of Benares, who informed him that they were going to Cheyt Sing for service. Capt. Wade was examined very minutely with respect to those troops, and other indications for revolt on the part of Cheyt

Sing, which at the time, viz. in the year 1781, created much suspicion on his part with respect to Cheyt Sing's intentions; considering, as he did, that period to be a very critical one to the state of the British interests in India. Here Mr. Burke pressed him very closely with respect to the description he gave of his ideas of the state of our affairs, to whom this witness gave uniform and steady replies, that he did consider the months of June and July 1781 as a very critical period of our affairs in India.

Capt. Wade's evidence on the subject of the assistance Cheyt Sing received from the Begums, made a forcible impression on the audience. It appeared by his replies, that independent of the public notoriety of the fact of the Begums having assisted Cheyt Sing in his rebellion, that while he, the witness, was stationed with a corps of Rangers, which at the time he commanded at the main battery, during the attack on the town and fort of Peteetah, he had it from the mouth of a Nudjeeb, who brought in a wounded prisoner to the battery, that he, the Nudjeeb, belonged to a corps of 600 men of that description, who had been sent from Fyzabad by the Begums to Cheyt Sing's assistance; from whom, the Begums, they had received two rupees each before their departure. The account of this man and another Nudjeeb prisoner, together with an account of Cheyt Sing's having massacred, in cold blood, thirteen of Capt. Wade's men, who fell into his hands in the Hospital at Muzapoor, produced much cross-examination from Mr. Burke, which, from its effect on the Court, evidently improved the evidence in favour of Mr. Hastings given by Capt. Wade, whose manner of delivering it was such as added to its importance.

On being questioned as to the state of the police at Benares subsequent to the

* It was mentioned in the Hall, that in the morning Mr. Hastings had presented a Petition to his Majesty stating the unprecedented cruelty of his case; and most earnestly praying that Parliament might not be prorogued until his Trial was finished.

The circumstances attending this cause are perhaps, rather curious, and not undeserving the attention of our readers.

In the first year, 1788, the Managers, twenty in number, attended in a body; a House was always formed by twelve o'clock, generally earlier, and the Court sat from that time until five, and sometimes later; it sat also thirty-five days in that year.

At present, in the year 1792, it is with the utmost difficulty a House can be made before two, and though we are now in the last day of May, the Court has only sat in this year sixteen days, but in fact not a third the number of hours that it sat in the first year. Two, three, or four dressed Managers are all that attend—very few of the Commons—and of the Lords, originally one hundred and eighty-six, there are now not more than from thirty to forty.

revolution,

révolution, his answer was, that to judge from its effect, the police of Benares was better regulated than that of London.

Before the Court adjourned, Mr. Hastings earnestly entreated their Lordships attention for a few minutes; and as the matter he had to state appeared to him to be extremely important, he begged to address them from his notes; which the Lords readily agreeing to, he spoke as follows:

"I Have already upon former occasions ventured to state to your Lordships the hardships which I sustained by the unexampled length of this Trial, even in the more early periods of it. I mean not now to repeat them, nor will it be necessary to shew to your Lordships how much they must be all aggravated by their subsequent extension. I merely allude to them for the purpose, and for that only, of bespeaking your pardon for the liberty I now take in praying your Lordships to allow me as much time as you can afford during this Session, to hear the remainder of my Defence. I should not so anxiously press this upon your Lordships, were I not assured that your Lordships have no longer any call for your attention to matters of greater importance, if any matter can exceed in its importance the course of a criminal trial protracted to such a length of years as mine has been.

"For my Defence on the Article now in evidence before your Lordships, my Counsel will desire only to call two more witnesses, selected from the survivors of a much larger number, whom we forbear to call from respect to your Lordships time, and a consideration of the uncertainty of my life or theirs enduring to the end of a more complete refutation of the Charge which the Commons have preferred against me. The examination in chief of these witnesses (for I cannot limit the time of the cross-examination, or answer for that which may be lost by interruptions) will not take up the compass of two, or at most three hours.

"Two more Articles will then remain. On one only will it be necessary to call any parole evidence; and for that only three witnesses; one, a gentleman of very infirm health, who was settled with his family in the South of France, but came to England in the first year of this long trial, and has remained here till this time, in yearly expectation of giving his evidence at your Lordships bar. Among the gentlemen whom I hope to be allowed to

produce in evidence to the Articles now under examination, there is one, who having given his attendance through a considerable part of the first year, when it became evident that he could not be called till the next, informed me that his means of subsistence, though not his patience, were exhausted; and requested me to dispense with his evidence that he might return to his service in India. I without hesitation cheerfully consented.—That gentleman accordingly went to India, served with credit two campaigns under Lord Cornwallis, is again returned to England, and again in attendance to give his evidence in my defence. Your Lordships will not be surprised if I should feel a more than common anxiety not to lose a witness whom I have recovered in so singular a manner from so many obstacles which threatened to deprive me of the benefit of his testimony, nor to lose so impressive a memorial of the extraordinary character of this Impeachment.

"It is hard, with so near a prospect of a close, to see it vanish into darkness; and another year, or perhaps other years, if I should live to see them, destined for the continuation of this trial.

"Let me beseech your Lordships to recollect, that more than five years are already past since I first appeared at your Lordships Bar; and I am sure, that if any one of the Noble Lords who were then living, and saw me there, had been told (if human wisdom, which is the result of experience, could have suggested such a conclusion) that more than five years must pass ere I could obtain a judgment, he would have pronounced it against the course of nature to expect it, and have resented the supposition, as an unmerited reflection on the justice and dignity of this great kingdom.

"In the first year, which was the year 1788, the Court which your Lordships now compose sat 35 days, generally assembling at twelve o'clock, sometimes earlier, and sitting until five, and occasionally later. This year your Lordships have sat, within a week of the same period of time, only 16 days, and have seldom been able to open the Court much earlier than two o'clock. I should be as ungrateful as unreasonable, if I could insinuate that these delays were in any respect imputable to your Lordships; neither is it my wish to impute blame to any: it is the effect, and not the cause, of which I complain.

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" Yet, my Lords, if I might be allowed to expostulate with those, whose zeal, animating them to exertions and to a perseverance of which even in that body there are few examples, brought me to the situation in which I now stand; I might plead, and surely without offence, that the rights and interests of the people of this kingdom, and the honour of its Crown, which were the great inducements stated by the Commons of Great Britain for calling together its highest Court of Judicature to sit in trial upon me, are at least as much concerned in their using the same exertions to promote the course of that trial, and to bring it to an issue.

" My respect forbids me to say more on the subject, nor should I have said so much, but to make it evident to your Lordships, that whatever causes of delay have occurred, or may in future occur, in the course of this trial, if it can be supposed that I would willingly be instrumental to my own wrong, neither have been nor shall be in any ways imputable to me. In proof of this I may allude to, but need not specify, the many constitutional, and even personal means to which I have had recourse, to accelerate the progress of the Trial, and remove every obstruction to it.

" That I might not again urge a request to your Lordships which it might not be in your Lordships power to grant, I have profited by the error which I have been told I committed in the Petition which I last year presented to your Lordships, and have addressed an humble Petition to his Majesty, praying that he would be graciously pleased to permit your Lordships to continue to sit till the close of the Trial.

" I rely with a perfect confidence on his Majesty's gracious disposition to grant my prayer; and in that case, I do assure your Lordships, that every possible means shall be used by me, and by the Gentlemen whom you have given me for my Counsel, to bring my Defence to a speedy conclusion.

" If, which I reluctantly suppose, it shall be deemed unreasonable, or, for causes which cannot fall within the scope of my limited comprehension, improper, I do most humbly and earnestly entreat your Lordships, in that case, that you will afford me as many days as may be necessary to bring the present Article to a close, and to allow my Counsel to sum up the evidence, while it is yet recent in your Lordships recollection.

NINETY-FIRST DAY.

THURSDAY, June 7.

The Petition of Mr. Hastings, so reasonable and just, had its due weight, and their Lordships afforded him their attendance this day.

The Court immediately proceeded to the examination of Lieut. Grey, an officer in his Majesty's service, who gave very clear and satisfactory evidence in favour of Mr. Hastings. He said he was an officer in the Chasseurs at the time of the insurrection of Cheyt Sing. He spoke of his disaffection—of the state of his preparation, and fully confirmed every material point in the evidence of Captain Wade on the preceding day. He stated the assistance afforded to Cheyt Sing by the Begums, as a matter of universal notoriety, never, as he believed, doubted at the time, nor since: that he remained in the country many years after Mr. Hastings's departure, and could safely swear, that there never was a man more universally esteemed and beloved by the natives than Mr. Hastings was: that the affection the officers of the army felt for him might be known by their letter to him, signed by many hundred officers, on his quitting the country, when it was impossible they could have been actuated by interested motives. A very long cross-examination was continued by Mr. Burke, in which every answer only tended to fix more strongly the evidence given in chief.

Colonel Popham was then called to the Bar; and in a very distinct and impressive manner he stated the military force of Cheyt Sing far different from what was necessary for him as a Zemindar, his state of preparation, the general opinion of his disaffection, the operations of the war, and the restoration of general tranquillity. He spoke most pointedly and fully to the share the Begums had in the rebellion; that independent of its being a fact of which no officer in his camp ever entertained a doubt, he had himself conversed with a wounded Nudjeeb, whom he saw in the town of Peteetah, after the storm of that place; that the man declared he was one of the corps entertained by the Begums—that he had received two rupees in advance—had arrived two days in Cheyt Sing's army—and had received two wounds—that the Colonel sent him to the Hospital, where he was cured, and then discharged—That he made no report of this to Mr. Hastings, because the fact was so universally talked of, and in his opinion so clear, as to render any communication

munication totally unnecessary; in fact, that no person could doubt of the disaffection of the Begums.—That he had been a great number of years in India—that Mr. Hastings was beloved and revered by the people of India—was better calculated to govern them than any man he knew, and the man of all others whom he would wish to serve under.

The Colonel underwent a very long and a most tedious cross-examination by Mr. Burke, chiefly from letters and papers, both manuscript and printed, which Mr. Burke had before him.

Mr. Burke questioned him upon the substance of certain Affidavits forming the Appendix to the Benares Narrative, and asked him if he recollected the substance? He did not. The Counsel put them into his hand. Mr. Burke insisted they should be taken away. Mr. Law complained of this mode of keeping a man totally in the dark. Mr. Burke then begged he would read them.—When the Colonel had done so, he asked whether the Witnesses recollected any mention in one of them of the Begums disaffection. This Lord Stanhope and the Counsel contended, was the height of absurdity, to ask a man whether he recollected what he saw? It was contended on the one hand to be *superfluous*, and on the other necessary.

Mr. Burke. "The Noble Lord, from his zeal for this cause, has been rather sharp upon me. I am sure nobody more than I can defer with greater sincerity to the Noble Lord's intelligence, his *sharpness*, and his *acuteness* (synonima)—but if your Lordships think it a wrong question to be asked, I shall resignedly submit—I am in the pleasure of your Lordships. At any rate *superflua non nocent*."

Mr. Law.—Yes indeed, they do very materially.—Mr. Burke. If they do, I know from *whom* I learnt the practice.—Mr. Law. "I am sure not from us."

The Counsel for the Defendant wishing to put a few further questions to Colonel Popham, Mr. Hastings audibly objected—"I had rather lose any possible advantage they might afford me, than protract the time of decision—It is my dearest object."

About five, Col. Popham was released, and then Capt. Simes was called. This Gentleman is also an Officer in his Majesty's service, and was Aid-du-Camp to General Musgrave during the present war. He was the officer mentioned by Mr. Hastings who had gone to India since this Trial began, and, after very active service in India, was now returned, to

mark to future ages the peculiar character of this Impeachment.

He stated, that he went thro' Cheyt Sing's Country in the beginning of 1781, and was very ill treated, and insulted—that the report of his disaffection was then general.—That he was with the army at Cawnpore when Cheyt Sing rebelled—that it was the universal report in the Camp, that the Begums were disaffected, and had offered military aid to Cheyt Sing—that nothing he had heard to the time of his leaving India last January tended to make him disbelieve the report; but, on the contrary, much to fix it, as perfectly true. That he heard the opening of this Trial before he went last to India:—that the Trial was a subject of general notoriety, and that, so far from effecting a change of opinion as to Mr. Hastings, addressees, as he heard in India, were sent from all ranks of people in his favour:—that he believed there never had been a man in a high station so universally esteemed and beloved as Mr. Hastings, and that the same opinions prevailed down to January 1792, when he left India: that he had conversed with several persons of the highest rank in that country, who all entertained the same opinions of him; and that his prosecution in England had not in any degree lessened the attachment of the people of India.

Mr. Burke did not chuse to ask Captain Simes one single question; but when Capt. Simes had spoken to the character of Cheyt Sing, and the ill treatment of the British Troops in Benares, and given an honourable testimonial to the character Mr. Hastings, collected both before and after his Trial, he here rose and said—"My Lords, I shall not lessen, by any cross-questioning, the unexpected blessing of Providence to Mr. Hastings of this Gentleman's return."

Some documents were then read—the Charge closed.

NINETY-SECOND DAY.

SATURDAY, June 9.

Mr. Plomer rose to request that certain Institutes of the Emperor Acbar might be read, as evidence of the Tenure of the Zemindars and Princes of the East being upon consideration of military and personal attendance upon the Mogul in his Wars.

Mr. Burke.—"I beg the learned Counsel will have the goodness to state the date of the Emperor Acbar's Institutes."

Mr. Plomer replied—"The Learned Manager knows as well as any man, what

what he asks me; however, I shall not pretend to be ignorant of his motive for the question.—Acbar reigned from 1585, I believe, to the close of the century.” Mr. Burke smiled.

Mr. Plomer then wished certain papers inculpatory of Major Osborne might be entered as read, that a charge seemingly attaching to his character coming in evidence might be repelled by the subsequent declaration of the Nabob Sujah ul Dowlah, who had made it. Mr. Burke objected; the Counsel explained; but they agreed to wave the question, if the Managers would say that they did not mean by the article in evidence to impeach the character of Major Osborne, which, as a military man, especially demanded that no stigma should be suffered to rest upon it. Mr. Burke would concede no such thing. The Lord Chancellor, perceiving the length to which these collateral vindications might stretch, interposed.—His Lordship cursorily examined the evidence, and said he did not discern any thing that called for justification. He remarked that they should never have done, if all these extraneous matters were attended to. The Counsel acquiesced.

Mr. Dallas then rose. His exordium was brief and pithy. The evidence repellent of the first Charge being now closed, it had fallen to his lot to sum up that evidence, and to offer such comments and reasonings upon both the Charge and the evidence, as the nature of them to him seemed to demand, and the circumstances of the case rendered necessary. A great portion of his difficulty had been removed, and his limited powers the less shrunk from the difficulty, as his learned friend who preceded him (Mr. Plomer) had gone over the whole with so much strength of labour, and acuteness of research, as diminished his toil, and relieved his apprehensions. Yet though, generally speaking, the *minutiae* had been insufficiently treated, there were some *grand* and principal points of the Charge upon which his observations might be well applied, especially considering that he should deliver them with all possible brevity, and occupy of their Lordships' time no more than was absolutely expedient.

Mr. Dallas observed, that the very first line of the first Charge contained matter against which he was compelled to protest; and the datum of which, he trusted, he should be able to refute, and consequently the conclusions which resulted from its admission. For it states, “that Rajah

Bulwant Sing was a *great* Chief or Zemindar of certain Provinces called Benares and Gazipoor;” meaning thereby, that he possessed the Sovereign authority in the said Provinces, holding of the Mogul through Sujah Dowla; Nabob of Oude, and Vizier of the Empire. But it happened unfortunately for the Managers, that the very first act which introduced this Bulwant Sing to the acquaintance of the Company, was his personal attendance in the field at the head of 20,000 horse; in consequence of a summons from Sujah Dowla, his liege lord. “We cannot be expected,” said Mr. Dallas, “to produce this mandate before your Lordships—the fact was so; he contributed his assistance to the Nabob Vizier, in the same manner, and on the same principles of fealty, that the lesser Zemindars afforded theirs to him.” Mr. Dallas read a passage from the Institutes of Acbar, which expressly affirms this to be the practice of Asia; and as both the terms of Prince and Zemindar are therein used, call the Rajah which you please, he is thereby implicated; his assistant services were as consequent from his holding lands in a time of war, as the payment of his *jumma* or rent for the same.

“However, the Charge goes on to state, that Rajah Bulwant Sing in the year 1764, about the commencement of the British power in India, did attach himself to the Company, and was, in the opinion of the Court of Directors, of signal service to our affairs and interests. I will tell you of what services he had the credit in India. It was afterwards believed, that he had leagued himself with the Country Powers for our extirpation, and his pretended friendship was a snare to draw us up the Country, that he might accomplish the design his wonderful attachment had so liberally planned. In short, at the very time of this pretended merit, the President and Council of Fort William, convinced of his duplicity, did write to Major Hector Munro, that if he had not entered into engagements with this man, he should dispossess him of his territory, and endeavour to seize his person. However, Major Munro did accede to his proposals, and Bulwant Sing joined our forces. But his engagements were illusory, and his faith was broken immediately.—He separated himself immediately from Major Munro; and when that gallant officer, with a scanty force, had defeated the vast army of the Nabob Vizier, then indeed the said Rajah returned to his engagements, after having by his treacherous desertion sought

sought to ruin the cause he had under the most solemn promises stipulated to defend. However, on the faith of certain promises for his future good behaviour, made by General Carnac and Mr. Marriot, he was, against the inclination of the President and Council, received back, they declaring that they were convinced he was unworthy of all trust and confidence, and that they wished no terms had been made with him, although, as they had been made, they were resolved to abide by them. In the Treaty of Allahabad, between Sujah Dowla, the Nabob of Bengal, and the English Company, through the influence of the Company the Rajah was secured in his territories, which under the said Nabob Vizier he held to the time of his death; and these are all we know of the services of Bulwant Sing." The learned Counsel stated the necessity for this reference to arise from an assertion of the Honourable Managers, that Cheyt Sing became more immediately an object of complacency to the British Government in consequence of the services rendered by his father, and that this was made an aggravation of the Charge against Mr. Hastings for a malicious oppression of the said Rajah, he being a person particularly dear in the eye of our Government on the paternal score.

Mr. Dallas then came to the investiture of Cheyt Sing in the Zemindary through the mediation of the Company, in the year 1770, in consideration of a *nakerannah* or fine of 17 lacks of rupees, and an increase of 2 lacks and a half upon his *jumma* or rent, with the express stipulation that the rent should in no wise be augmented—He mentioned in 1775 the interference of our Resident at Oude to prevent such an extortion of the Nabob. Mr. Dallas commented with much severity upon the difference which subsists between the expressions of the Charge, "that no other demands whatever should be made upon him," and the instructions to Mr. Fowke, limiting them to increase of rent. He then narratively proceeded to the death of the Nabob, and the termination of our agreements with him in the opinion of the Council, an opinion in which Mr. Hastings never concurred—the transfer of the Circar to the Company from Asoph ul Dowla, the succeeding Nabob Vizier, and the demands which, in the rumour of war, were proposed, and, upon the reception of certain advices, actually made upon Cheyt Sing, as his quota of the expences attendant.

Mr. Dallas then remarked, that upon

the ground of malice in the mind of Mr. Hastings this Charge was erected. If could be substantiated, the Charge would take place; it not, it must be futile—together they must *stand*, or together they must *fall*. And here the learned Counsel discriminated the particular *species* of MALICE to be proved—not that implied by our Law as the motive of every wicked act—"but a MALICE cold and cautious—rooted and deadly—not rushing into immediate act, but lurking till a time of vantage, and then, by continual efforts, planting its snares, to disgrace and to blacken—to *ruin* and *destroy*." (Mr.) Burke bowing his assent to every part of this eloquent definition, established that this was the sort of malice he meant to prove upon Mr. Hastings).

Mr. Dallas then referred to the particular Government of Mr. Hastings. "I wish, my Lords, the Gentleman at your Bar to be tried upon the principles of every legally-constituted Government in the world. By legally-constituted Governments, I do not mean any of those where the MANY are supposed to be created for ONE, and the rights of that one are as all, and those of the many are as nothing. All such, wherever they may exist, under whatever name, are tyrannies monstrous to reason, and degrading to humanity. No, my Lords, I speak of Governments, the vital principle of which is the good of the governed—not of a Sovereignty of right, but one of trust—a delegated power, a confided authority for the general blessing, and resumable when by depravation it shall have been felt to be a general curse. Let the Government of Mr. Hastings be tried by this standard, and I engage to vindicate him completely before your Lordships. I could, my Lords, take a *legal exception*, which I pledge myself to make out, to the whole of the proceedings; but our wish is for substantial justice, and subterfuge never did, nor ever can obtain it.

"But the demands of justice are not thus confined. The demands are universal. If Mr. Hastings be guilty of malice, the charge applies to the Court of Directors; it applies to His Majesty's Ministers; to the Honourable House even who impeach him: and to your LORDSHIPS; nay, to the Nation at large. It is a stigma that fastens upon our fame, and degrades and pollutes the character of the Country. We owe it therefore to all, to examine this Charge, which has so wide an application; implicating many who are now no more. We owe it to individual honour

and general character; it is our duty to the reputation of the LIVING, and the memory of the DEAD."

Mr. Dallas then, by a variety of evidence, proved, that Cheyt Sing was a subject, and owed the Company every duty due from a subject to his Sovereign. He proved from History, at different periods of the Mogul Empire, that Zemindars invariably afforded military assistance in war. He exposed, in very severe terms, the flimsy, mutilated, and garbled evidence given by the Managers, in order to shew that in 1775 Mr. Hastings engaged to make no demands of any kind upon Cheyt Sing beyond his annual rent. He wondered how a Charge so strange could have been made, and, looking round to the Managers, asked, Who could have drawn up such an Article? He proved, incontrovertibly, that every settlement made with Cheyt Sing applied to his annual rent only, and that he was not released from any one of those duties due from subject to Sovereign; that he had taken an oath of fealty and allegiance on his investiture, and was proclaimed throughout the Zemindary of Benares as the subject of the Company.

Having fixed the right incontrovertibly, and having exposed the unfairness of the Article, in taking a parted expression in one of Mr. Hastings's minutes, for the express purpose of fixing a sense upon it totally different from the real meaning, and the sentence been taken together—he said, that, for the sake of argument, he would make a concession most wild and extravagant in itself: he would suppose it had been proved, that Mr. Hastings had no right to demand military aid from Cheyt Sing, still the Managers would not advance one step, unless they could prove that malice which they had so boldly charged. The State received and enjoyed the benefit of the annual subsidies, and had, in truth, given them their approbation, when the Legislature re-appointed Mr. Hastings in 1781 to the Government General. It remained then to examine what ground there was for this extraordinary charge of malice. After using all the industry in his power, he found its origin to be a solitary passage in Mr. Hastings's narrative, who mentions, that on General Clavering's supposed accession to the Chair in Bengal, Cheyt Sing deputed a Vakeel to compliment him. This act of the Rajah's excited such moral and deadly hate in the mind of Mr. Hastings, that from that moment he determined to ruin the Rajah. Such is the true, monstrous and incredible undoubt-

edly, and supported by evidence well worthy such a Charge. The event happened in June 1777. No trace of enmity is discovered until the 9th of July 1778, more than a complete year after the offence, and then to be sure it breaks out in a very curious manner.

It was in evidence before their Lordships, that his Majesty's Ambassador at the Court of France (Lord Stormont) had in June 1777 transmitted to Mr. Hastings an account of a design formed by the French Ministry to attack the British Possessions in India. In July 1778 an account arrived in Bengal, that war was actually declared between France and England—Every man knew that war with Spain must follow, and we had then been three years engaged in an unsuccessful war with America. What was Mr. Hastings to do in Bengal? Could he expect an union of two great Powers in India in his favour against France, with whom it was known they were then in alliance? Could he expect, that instead of receiving those returns of wealth from India which were to uphold a sinking Country, Great Britain would pour her treasures with a liberal hand into the lap of Bengal? Could he believe, that over-matched as she was in Europe, in America, and the West Indies, Great Britain could afford to send ten British Regiments, and a fleet, to India? He certainly could not; he must depend upon his own resources. He did depend upon them, and he succeeded against the most powerful combination ever formed for the overthrow of an Empire.

He intreated their Lordships to consider what Mr. Hastings did, and whether the imagination of man, or the malignity of man's nature, could have been supposed capable of so perverting his acts, until that perversion appeared in the name of the Commons of Great Britain. On the first news of the war he proposed to increase the army; the Council unanimously approved the measure—to capture all the French Settlements in Bengal, and all their ships; the Council agreed—to recommend to Madras instantly to commence the siege of Pondicherry; the Council agreed—to fit out a naval force to reinforce Sir Edward Vernon, the British Commodore; the Council agreed. Yet are these acts of the greatest public merit, involving in them very great personal responsibility, supposed all to be done with a view to harais, oppress, and finally to ruin Cheyt Sing, because he was, on the same day, called upon to contribute his share to the additional expence that these measures

measures would bring upon the public. Their Lordships would see, he said, that all their ships were taken up on an idea that Bengal might be invaded, and with the public belief in all the Council, that France would make in the course of the war (as in fact she did) great efforts to recover her lost consequence in India. He then begged their Lordships to consider, how a charge so wild and strange was supported.

The motion for calling upon Cheyt Sing is made, as all the others were, on the same day by Mr. Hastings. — Mr. Francis says he acquiesces, but thinks Cheyt Sing should be told that the demand will only be continued while the War lasts. Mr. Hastings says, he means so, and adds, that as there seemed to be some difference of opinion *as to the right*, he wishes to leave the decision on that point to their superiors; stating his own opinion, which was, that we were precluded by no engagements from calling on Cheyt Sing for extraordinary aids on extraordinary emergencies. Mr. Dallas was as convincing as eloquent in this part of his speech.

He said, it was impossible that Mr. Hastings or Mr. Francis could have been actuated by malice in their conduct to Cheyt Sing—but notwithstanding the Managers had attributed to Mr. Francis every virtue under Heaven, and had made him more an angel than a man, he must allow, that the charge of malice applied with infinitely more force to Mr. Francis than to Mr. Hastings. The latter makes a demand, and states that he has a right to make it—the former, with doubts in his mind *as to the right*, agrees with Mr. Hastings, without even expressing his doubts, for the information of his superiors—but Mr. Hastings, to whom he had mentioned them in conversation, fairly brings the subject forward, and as there was a doubt as to the right, leaves his superiors to decide. Is there any thing like malice in this proceeding? or if such a charge would apply at all, it must be to Mr. Francis, and not to Mr. Hastings. “If it be malice in Mr. Hastings, it must have been deeper malice in Mr. Francis, who relaxes from a perseverance of opposition to the measures of Mr. Hastings, and concurs with him in *this*, and *only* this, meant as it is stated for the purpose of gratifying a rooted hatred, and ruining the Rajah.”

It must be here noticed, that among the proofs given of Military Aid being

PART V.

prevalent through India, Mr. Dallas ingeniously drew it from the testimony of Mr. Stables, certainly not the friend of Mr. Hastings, whom the Managers had produced as their witness in this charge. He also quoted a letter of M. Baillie, a French Writer of authority, and a modern History of Hindoostan, also of authority—which seemingly established the point. After a variety of strong antithetic reasonings, hypothetically and *de facto*, upon the intent and scope of the Treaty of Allahabad, the proceedings of the British Presidency, and the motives of Mr. Hastings, Mr. Dallas at five o'clock was interrupted by the rising of their Lordships, having spoken *four* complete hours.

NINETY-THIRD DAY.

MONDAY, June 11.

The Court assembled at half past one, and Mr. Dallas proceeded with the same fluency and clearness as on Saturday, to remark upon the charge and the evidence; from the point where he left off, down to Mr. Hastings's departure from Calcutta, in July 1781.

The first striking passage was, where he came to answer that part of the charge which alleges that Mr. Hastings under *pretence* of a war, of which he had received no authentic intelligence, called upon Cheyt Sing for military aid, but *really*, with a view to harass, oppress, and finally to ruin him. He bestowed upon this Charge the epithets *frivolous*, *frivolous* and *absurd*. He stated in the clearest manner the intelligence that Mr. Hastings had received from Lord Stormont, that war was likely soon to happen, and also of the measures France would pursue until it should break out; he paid Lord Stormont the highest compliments for his zeal in the service of his Country, which had induced him to communicate this important information to Mr. Hastings, though he had no authority from his own Court so to do. He next stated the communication from Mr. Baldwin at Cairo, that war had actually been declared between France and England, and he emphatically asked their Lordships, what would Mr. Hastings have merited, had he paid no sort of attention to this communication? Undoubtedly he would have merited the severest censures from his country; and what was his *return* for a conduct so much the reverse? The Commons of Great Britain had brought him to their Lordships' Bar, because, despoiling all

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personal consequences, he had acted upon the authority of Lord Stormont and Mr. Baldwin, and had looked upon war to be actually declared, though he had received no official advice of the fact. A charge like this, Mr. Dallas said, was unworthy the dignity, the justice, or the common sense of a great Nation, and would operate in all future times as a dreadful lesson to Generals, Admirals, and Governors, who were entrusted by Great Britain with the care of her interests in the distant quarters of the Globe.

Having exposed the absurdity of the Article in this view of it, he next took it up most ingeniously in another. Under the *pretence* of a war in Europe, Mr. Hastings had not only made every defensive preparation in Bengal, of which the demand upon Cheyt Sing was a part, but he had also taken all the French Settlements, and all the French ships in Bengal. Yet this act—an act against the law of Nations—was not charged at all; but if there was any foundation for the Article, all these measures he took merely to furnish a ground for harrassing, oppressing, and finally ruining Cheyt Sing.

Mr. Dallas next proceeded to consider the various circumstances that attended the several demands made upon Cheyt Sing for military aid. He went through the part which Mr. Francis had in each of these transactions—He proved most clearly that he was a party in every transaction, particularly in the Proceedings of Council in the years 1778, 1779, and 1780, in the first and last years of which Mr. Francis had acceded to the demand upon Cheyt Sing, and in the second dissenting. Reasoning with much force and method upon the several points of the subject, Mr. Dallas drew to that unanimity recommended at the crisis of our fate, when the Carnatic was invaded; when the French were in arms against us, the Mahattas making an incursion, and all to the general mind presented nothing but ravage and ruin, famine, pestilence, and hopeless despair.

“There are a sort of men who have

“just intellect sufficient to furnish out objections to grand designs, which they could never have planned; men whom great emergencies terrify, and whose shallow powers are by calamity oppressed and enfeebled.—Not such Mr. Hastings.—In the moments of our awful and alarming danger, with a high and manly mind, he came forward with relief suitable to the evil; he came forward to *act*, and not to *talk*.—This is, said he, a time which calls for union and for vigour; altercation should be at an end: we have debated much too long. And well, my Lords, might Mr. Hastings say this—his Government indeed had been one of studied altercation, of perpetual resistance to every measure he had proposed. Fully sensible then of the necessity for concurrence, it was resolved by the Governor-General and Council, that a demand of Cavalry should be made upon Rajah Cheyt Sing. But here again the disingenuous style recurred in which the Charge was worded; for thereby you were led to imagine, that the Cavalry was an idea proposed originally by Mr. Hastings, in pursuance of his malicious intentions against the Rajah*; whereas the idea was started by General Sir Eyre Coote, and acceded to by the Governor-General and the remaining Members of the Council.”

Having thus at great length commented upon the conduct of the British Government in India towards Cheyt Sing, the Learned Counsel next investigated that of the Rajah, and demonstrated his treachery and resiliency from the Oath of Fealty he had taken to the Company; and, strictly speaking, the forfeiture of his Zemindary with all its Rights and Privileges, as the consequence of so flagrant a breach of his part of the engagement.

He exposed the falshood of all his excuses, and established the right of the Company to make the several demands, by the most convincing arguments. He

* In one part of his speech, Mr Dallas declared, that he conceived it impossible for the wildest suspicion, in its most saving moments, to have imputed malice to Mr. Hastings for his conduct to Cheyt Sing, though the Commons of Great Britain had actually and directly charged it.

In another part, Mr. Dallas observed one thing, which, to the honour of Mr. Hastings, should be peculiarly recorded: “In thus mentioning Mr. Francis,” said Mr. Dallas, “I have no personal enmity or resentment that is individual; but if I had, I, as well as my Brother Counsel, have had it in command from Mr. Hastings, to avoid, in regard to Mr. Francis, all personal animosity whatever!” For Myself, (added Mr. Dallas) “I owe him nothing as a Gentleman, but only civility.”

proved, by the evidence, the actual design formed by Cheyt Sing, to seize the first favourable opportunity to render himself independent; and at a quarter after four, being a good deal exhausted, he prayed leave to close for the day, saying, that he would conclude all he had to offer to their Lordships on the next meeting of the Court.

The Lords adjourned accordingly.

NINETY-FOURTH DAY.

TUESDAY, JUNE 12.

Mr. Dallas began, by exposing in very strong and almost indignant language, the injustice of making that a charge against Mr. Hastings, of which the Court of Directors, the King's Ministers, and former Parliaments, had approved; but the charge having been made, he never would fly from it; and he proved, by reference to evidence, that every part of the charge was futile, ridiculous, and absurd.

He next came to a subject, which he touched with an ability that must command universal approbation, while he preserved throughout the language of a Gentleman, and the deference due to the person whom his Majesty has placed in the first situation in the Country—we mean the fundamental difference between Mr. Pitt and Mr. Fox, on the only points in which the merit or demerit of Mr. Hastings's conduct to Cheyt Sing must turn.

He paid Mr. Fox the highest compliments; declared that he looked upon him as the ablest debater this country ever possessed; and as a man, who, scorning any appeal but to the reason and good sense of his auditors, had fairly and openly put this Charge upon its true ground. He had opened it in the last Parliament: he had held this plain and intelligible language, that Mr. Hastings was under these engagements to Cheyt Sing; that under no possible circumstances could he demand more of him than his annual rent; consequently every extra demand was a crime; and an intention to punish Cheyt Sing, for not immediately obeying these demands, was an aggravation of that crime,

All Mr. Fox's eloquence could not, as he himself confessed to their Lordships (and that alone entitled Mr. Dallas, as he said, to go into this subject at all) induce another Right Honourable Gentleman (described by Mr. Fox as a person of the first abilities, and the first integrity) to concur with him.

That Gentleman (Mr. Pitt) had strenuously contended, that Mr. Hastings had an undoubted right to demand extra aids from Cheyt Sing in war; that the Rajah was criminal in disobeying; that his disobedience merited punishment, but that Mr. Hastings proposed to carry that punishment beyond the proper line, and therein the crime consisted. After stating the singular, the unprecedented hardships of Mr. Hastings's case, he said it was impossible to prove that to be criminal to which Mr. Pitt objected, namely, the intention to impose a fine. "I have," said the Counsel, "the greatest opinion of the abilities of Mr. Francis, but I do not suppose him the equal of the Honourable Person referred to—if," therefore," said the ingenious Pleader, "the great Character alluded to, after having debated the point four days with the Honourable Manager, possessing the purest eloquence, that whose charm is simplicity and whose character is force, remained still unconvinced, it is not surprising to me, I own, that Mr. Hastings should have been unconvinced by the arguments of Mr. Francis."

All this part Mr. Dallas argued most ably, and to the conviction of every man who heard him; and concluded by observing, that whatever Mr. Pitt's opinion might be, the Commons of Great Britain had charged it as a crime, that Mr. Hastings called upon Cheyt Sing to contribute to the expences of the war; and therefore, as was his duty, he had fully, and he hoped completely, refuted the Charge.

He next went into a clear detail of Mr. Markham's evidence, which totally destroyed every allegation in the Articles.—Of Mr. Markham he spoke as of a man whose character was far above his praise, who had stood a cross-examination of four days from one of the most indefatigable examiners upon earth, and that every reply had only served the more strongly to fix his former testimony.

He then mentioned that singular circumstance of the letter found by Mr. Burke on a Sunday, after having been in his possession ten years, and sent to Mr. Markham on the Wednesday, just as he was going into Westminster-Hall. He noticed the wonderful agreement between all the material facts in that letter, and the evidence given by Mr. Markham; though the one was written when the subjects were fresh in his memory, and the other given at the distance of two

years. It was an event most fortunate for the honour both of Mr. Markham and Mr. Hastings. He particularly remarked upon an expression in Mr. Burke's letter to Mr. Markham, that the facts he had stated, differed very little from those he had heard from *other channels*; and after this *confession*, Mr. Dallas said, he was indeed astonished how the charge of *murder* could have been preferred against Mr. Hastings.

The Learned Counsel then considered the transactions at *Chubbahra*, and drew the most lively and affecting sketches of the miserable scenes that were consequent upon Lieut. Birel's advancing towards the Palace.—He refuted the pretended insult of Mr. Markham's Chubdar, and ascribed the cause of the firing within the walls to have been the firing without; the resistance of Lieut. Birel to the party that way-laid him, determined the massacre of the Sepoys, who were without ammunition, by the prepared forces of the Rajah. "Thousands of Heroes," said Mr. Dallas, "rushed forward to conquer these unprovided Antagonists, and with a cowardly ferocity insulted the dying and the dead."

When Lieutenant Birel advanced, he saw infernally mangled the bodies of his friends Stalker, Scott, and Sims, in the gate of the Palace, gashed with innumerable cymetars, and all but dead upon the place. The Rajah, it is true, fled—he fled to his strong forts for safety. Then it was that Mr. Markham, to the solicitations of Mr. Gardiner, exclaimed, "How can you plead for the murderer of your friend?" A burst of feeling this from a manly and tender mind, alive to the inhuman butcheries of that fatal day.

But Cheyt Sing sent submissive letters to Mr. Hastings, it seems, during these events, while his Brothers were declaring murder meritorious of the British Forces wherever they were found, and spurring up massacre by the exhibition of the heads of the slain, borne triumphant through the reviling scorn of the infatuated subjects of the Rajah. The blood of British subjects was to be of little account, however, against even the slightest inconvenience of the Rajah.—The slaughtered English were to be passed over unavenged, to prepare the way for the re-instatement in all his Rights of their Destroyer.—He was to be welcomed with joy, it was malice not to welcome him back, who had poured down his tender mercies in the peals of vindictance from

his Forts, and by whose command a general massacre of the English had been enjoined in the Province of *Benares*.

The Charge then went on to state the grievances sustained by Banna, the wife of Bulwant Sing, in the capture of *Bidjgur*—the *tendur* Banna, in her Palace, a Fort the strongest but one in the Zemindary, 750 feet from the ground, halfway between earth and heaven, under whose command the Garrison had fired upon the Company's Troops for six weeks together, until finally it was taken by our forces. But here there arose a complete triumph to Mr. Hastings, from his own private letter to Col. Popham, in which (said Mr. Dallas ironically) "he maliciously recommends to the Colonel the most *humane* treatment, such as his benevolent mind will induce towards persons of the rank of the captives, their sex, and, above all, their *misfortunes*." Here the Counsel most gloriously exulted—"These are no swelling sentiments of sounding Morality, which a well graced Actor shall deliver to an applauding Public—This is not a Speech by the greatest Master of Eloquence, studied and delivered to fascinate those who hear, and those who shall read the purest monuments of Oratorical Glory that were ever delivered in any Age or Country—it is the solitary requisition of a Private Letter, bearing, however, the stamp of his benevolent soul who sent it, never meant for publicity, nor entered upon the public minutes."

"Such as do good, and blush to find it fame."

Referring to the sympathy shewn by the Managers to Banna, and the utter want of it to the murdered Europeans, Mr. Dallas indulged himself in this *classical* banner of the Managers. He doubted not their gallantry. "Of all Homer's heroes, they would probably have chosen the character of *Diomed* last, and at the fall of *Palmira* they doubtless would have wept in the train of *Zenobia*."

He observed, that the great grounds of the Charge were unjustifiable demands of money from Cheyt Sing, for three successive years, for the public service, the arrest of Cheyt Sing, and his expulsion after the massacre of the British Troops. These measures were stated by the Commons to be high crimes, and the Managers had endeavoured to convince their Lordships that they deserved to be so denominated. "Forbid it, (added Mr. Dallas) the honour of Mr. Hastings!

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but forbid it still more, the fame and glory of this country! My Lords, we have heard much of BRITISH JUSTICE; and here, as in her chosen temple, we have been desired to behold her, displaying her loveliest form, and placed in her most graceful attitude; but to *me* her form appears more lovely when turning to the *injured*; her attitude most graceful, not when she rises to strike the *oppressor*, but when she stoops to raise the *oppressed*. This *British Justice*, to whom our adoration is due, is, no doubt, a Being *consistent with herself*. To her it can never have been necessary to suggest, that the *first* duty of justice is to redress a wrong; that to punish the author of that wrong, is the *second* only. No doubt, the *justice* of this country has long since *restored* to the man represented as an *oppressed and persecuted Prince*, the sums which an individual *extorted* from him. No doubt, *long since*, he sits upon the throne of his ancestors, and rules his people with recovered sway. Not to, my Lords: We have been told, that he is at *this moment* a *vagabond* and *wanderer*; and the last accounts we have of him were, that the British Resident at the Court of Madajec Scindia *refused* to appear there if Chieyt Sing were *present*.

"My Lords, when I hear *this*, can I help exclaiming, Oh! BRITISH JUSTICE! thy ways are *mysterious* and *incomprehensible*! No doubt, thou art, as thy worshippers represent thee, a Being *upright* and *wise*; chaste are thy *determinations*, virtuous thy *decrees*; but thy *means* are *impervious* and *inscrutable*. Thy *temple* is indeed erected with the *majesty of darkness*; the *light* shines not upon *thine altar*: suffer me then to depart, nor seek to explore, what I perceive I am not permitted to *understand*.

"Thus much, my Lords, as to the *situation* of one of the persons whose *treatment* is the subject of the present Charge. But as to the other, the Gentleman now at your Bar—once more let me beseech of you to consider the *sort* of accusation, and the *person* against whom it is made. It is a charge of *cold* and *contriving malice*. What the conduct of Mr. Hastings *had been* up to this period of time, what his conduct *had since* been,

and what the *character* which that conduct has obtained for him, is perfectly well known to your Lordships, and to the world.

"At the time when these acts are stated to have been done Mr. Hastings was advanced to that period of life, when the *general character* is *correctly* ascertained. The spring is the season of promise, but in the autumn the tree is known by the fruit it has produced. No man in the decline of life becomes malicious for the *first time*. It is a *taint* that is lodged in the *heart*, it mixes with the *blood*. It pervades the great mass of conduct, and gives *more or less* a tinge to *every action*. This character of any man is but the result of observation upon the *whole* of his conduct. What then is the character of Mr. Hastings?—But, my Lords, here I stop. I will not do injustice to the eloquent and forcible manner in which my learned friend who opened the Defence has already treated this subject; I will only say, that it is almost an enviable lot to be *accused*, when the effect of accusation is, to gather round him every man of virtue and sensibility, who has ever had occasion to know him either in public or private life, to wash out with their tears the stains which his accusers have cast upon his character. It is a glorious situation, my Lords, to be charged as the *oppressor of suffering nations*, and in the very course of the inquiry into that charge, to have those nations pressing forward to your Bar, *not to accuse*, but to applaud; nor to claim his *condemnation*, but to demand his acquittal.

"These are circumstances which, upon such an occasion, it is impossible not to feel, and to express. But let it not be thought that I mean to rely upon the *character* of Mr. Hastings for his defence against any part of his accusation, or to suppose his conduct of a nature, that his general character must be called in to explain it. That would be to offer him from this side of the House a *still more cruel insult* that any he has experienced even from the other. On these two great supports rests his Defence, his *own conduct* and *your honour*.

The Court immediately adjourned, and fixed the further proceedings in the Trial to the Second Tuesday in the next Session of Parliament.

P A R T VI.

1793.

EING THE

SIXTH SESSION (OR YEAR) OF THE TRIAL.

THE Parliament assembled again, unexpectedly, on THURSDAY, December 13. On the day fixed for the commencement of the Trial, however, pursuant to their former adjournment, their Lordships farther adjourned their proceedings till THURSDAY, January 8, 1793, on which day a Message was sent to the Commons, announcing that they would proceed on the Trial on THURSDAY, February 14, when their Lordships again discharged their former order, and upon the motion of Lord Chedworth ordered, that the House should proceed on the Trial on

FRIDAY, February 15.

NINETY-FIFTH DAY.

At half after one the Peers, to the number of twenty-six, came in procession; and Mr. Hallings being called to the bar with the usual formalities, Mr. Law opened his defence to the second Charge of Impeachment, relating to the Munny and Bhow Begums of Oude. After a very affecting introduction, in which he stated that the situation of his oppressed client was such as, he believed, no *human being* in a civilized nation had ever before experienced, and which he hoped, for the honour of human nature, no person would ever again experience, Mr. Law entered into the History of Hindostan, from the establishment of the Mahometan religion in that country under the reign of Cante-mir (Mahomet IV.), to shew, that neither by the laws of descent, nor by any other law existing in India, could the mother or the widow of Suajah ul Dowla claim the vast sums of money deposited in their hands, and hoarded up in the Zenanah, in any other view than as Trustees to the Nabob, and his son the present Asoph ul Dowla. The claims of the Company upon the present Nabob for actual services performed, were therefore due from the Begums, and of course ought to be paid by them.

His argument went to shew, that this Princess, who was stated to have been the victim of British rapine, through the agency of her son, was, in fact, herself guilty of the foulest usury and

extortion. For a supply of 26 lacks given to the Nabob, she had demanded and received a *jaghire* of four lacks *per annum*;—that was to say, a limited security amounting to nearly *six* years purchase in perpetuity! This was an instance of extortion, which, perhaps, the inventive genius of European usury might have equalled, but could not have exceeded.

On another occasion, the Begum in granting a supply to the immediate necessities of her son, had compelled him to take some *damaged* muslins, and other goods, in part of the loan. This transaction brought English and Asiatic manners to a near approach indeed. It was the exact counterpart to the scene in the Miser, where the father, being ignorant who was the borrower, insists that, as a part of the sum to be lent, a certain parcel of *moth-eaten* furniture shall be included.

From this the Counsel passed comment on the right of the Begum to the treasures contained in the Zenanah; of which he contended that a very small part indeed was to be regarded as her private property.

He then continued the line of his defence in a direct parallel with that delivered in before the Lords November 23, 1787, illustrated by a quantity of very learned references to Grotius and to Vattel upon the nature of Treaties, and that of guaranties upon *oath*; which last obligation, however in *common sense* it might superadd any guilt upon violation, in the eye of *law* imposed no additional validity or inviolability.

He fully denied the assumption of any new powers by Mr. Hallings when he had determined upon visiting the dominions of the Nabob Vizier, and also any extraordinary authority delegated to Mr. Middleton; and threw out some insinuations upon the conduct of Mr. Francis for endeavouring to weaken by opposition at the Council that influence which the peril of the times made it expedient for the Governor-General to possess.

Mr. Law then adverted to the *cruciata* *armata*

carmina heaped so unmercifully upon Mr. Hastings. If the clothing of the Nabob's army was defective he was accused; he was guilty of the clothier's neglect. A Governor-General over a mighty Empire was criminal if he did not descend to all the little trivial detail of trade and contract; nay, in the Seventeenth Article he remembered an allegation in which Mr. Hastings was prosecuted for not having provided a surgeon to cure Nabob Behadur's wound.

[This is by no means a fair statement—The Charge affirms, that the Nabob was without food—had been wounded by an assassin, who had murdered his aunt in Oude; and the object of the Charge is, that the unhappy brother of the Nabob had not a *daum* (money) to pay the surgeon, who attended him for the love of GOD alone.]

A little before five o'clock the Court adjourned * to

TUESDAY, February 19.

NINETY-SIXTH DAY.

Mr. Law proceeded in his opening of the defence on the Begum Article; and in very forcible language, and with his matter admirably arranged, went through the remainder of the Article.

He pointed out, that in almost every instance the Charges were refuted by the evidence called by the Managers themselves, and particularly alluded to the unjustifiable means resorted to by the Managers in examining their witnesses.

He commented with some severity on the evidence of Mr. Edwards. This gentleman had been in India from the year 1776 to 1783. In this interval there occurred two severe droughts, yet this gentleman passed his time in such a state of "incurious *nescience*," that he was completely ignorant of both, though each had actually caused a famine.

Amidst an infinite variety of matter, highly interesting to Mr. Hastings to have explained to the Court, he stated some that came home to the feelings and common sense of every man in England. In the Benares Article it had been stated by the House of Commons, that Mr. Hastings did certain acts under the *pretence* of a war. On so wild an allegation Mr. Law com-

mented with great force; he asked, if that was a *pretended war* which all India knew to be true? which this country, to its cost, knew to be true—since she had expended above a hundred millions in it, and lost half her foreign dominions—in which, in India alone she was successful under Mr. Hastings? In like manner he was accused on this Article of taking from the Begum five hundred and fifty thousand pounds, in order to pay a *pretended debt* due from the Vizier to the Company. Could such a charge be endured for a moment? Was it a *pretended debt*? Why then had not the House of Commons ordered it to be paid back again years and years ago? But the fact was, that it was a real, a free, and a just debt; acknowledged to be so by all parties, and paid as such. But it were an endless task to enumerate all the absurd and contradictory accusations that had been preferred against Mr. Hastings. Some years ago, on a very memorable occasion, it was admitted that this was a free debt; but the recovery of it was stated to be impossible; and a great leading character (Mr. Fox) struck it out of the public accounts as desperate. Hence the persecuted situation to which his client had so long been subject. He had falsified every prediction of his enemies as to India. He had preserved it in war; he had left it in peace; he had improved its resources; he had proved that those who pretended to some knowledge of that country knew nothing about it. These were crimes not to be forgiven; he had fallen a victim and a martyr to the zeal, ability, and success with which he had served his country.

In the course of his speech, Mr. Law threw out an insinuation, that the Managers had read one treaty in the place of another. The learned Counsel said it would be termed *legerdemain* in him, but in them it of course could not receive so harsh an epithet.

The strongest point of the Charge, which goes directly to the affirmation of the deepest cruelty and tyrannical apathy in Mr. HASTINGS, was very ably refuted, and with a feeling and energy that bespoke the learned Counsel's own conviction of the falsity of such accusation. In the Charge, Mr. Hastings, having heard of

* It was impossible to view the Court without strong sentiments of regret, for the havoc which time has made amongst the members of it since this Begum Article was opened in 1783. At that time one hundred and eighty-six Peers were present: On this day, from twenty-two to twenty-eight—one hundred and twenty-one changes in the Peerage, since the year 1788, having taken place.

LORD LOUGHBOROUGH (the new Chancellor in the room of LORD THURLOW, who had resigned the Seals during the preceding Vacation in 1792) presided of course.

the distresses suffered by the unhappy women in the Khound Mihal, is stated to have written "that the severities had been justly inflicted."

"Were he," said Mr. Law, "so dead to every feeling of Humanity, of Justice, and of Mercy, as to exult in the sufferings of those, whose innocence, whose sex, and whose condition forbade them at once to be objects of danger and of resentment, I should have no argument to urge in his behalf—my Client would be the most abandoned demon in a human shape, and he should never, he knew, be expected to rise in his vindication. But the whole was without a shadow of truth. By reference to the Letter in which these severities are approved, it would be seen that the approbation was applied to a circumstance not happening until *fourteen months* afterwards—that which was approved being simply the compulsory measure to quell the rebellion of the Begum."

Touching the not having communicated this rebellion to Mr. Wheeler, Mr. Law excluded it on this ground, that such communications would have been intercepted by the arts of the prime mover of the rebellion, Cheyt Sing; and Mr. Hastings's letters are consequently extremely short, all referring to an ultimate explanation, at leisure, of the whole transaction, which accordingly is to be found in the appendix.

As to the throwing the Ministers at Fyzabad into prison, and loading them with irons, Mr. Law remarked, that although to an Englishman a grol founded always ungrateful, and the very term *fetters* must be repulsive to freemen, yet it was necessary to be told, that the European notion of them was not here to be applied. Their prison was a palace, and they had *forty* attendants. Nay, upon the complaint of one of them, who found this palace too small and inconvenient for the Asiatic luxury to which he had been bred, they were removed to one of the finest in all Fyzabad. The Counsel chose to retort Savage the poet, who wore fetters of *twenty* pounds weight, while those of the Ministers of Oude were but of *two* pounds weight. To shew that the custom of fettering was not obnoxious peculiarly to their local prejudices and customs, he stated an instance of a Banker being fettered for debt simply, although Gopal Das and the British Settlement had offered to be his sureties and he was obliged to bear the chains of their prisons before he could be released. If such was the infliction for a *debt*, it could not be thought a malicious

severity exercised upon the accomplices in treachery and rebellion.

Mr. Law deplored feelingly the wanton and ungrounded assertions of this kind in aggravation of a mass of accusations which had fallen during five years upon the head of the Gentleman before their Lordships—How was he to repel such calumnies that were intended certainly ("I should say if alluding to any other persons") to sink him, for ever?

"If there be any of your Lordships who shall demand, why any legal investigation of this rebellion did not take place, and desire me to give you the affidavits of our Law, I have them not to produce—I have no record, no parchment that shall explicitly state the crime of which the Begums we affirm were guilty. In addition to the affidavits taken by Sir Elijah Impey, Mr. Hastings took but *three*; they were those of his officers, under whose very cognizance the events were passing, events to perfectly matter of notoriety, that in India no whisper of a doubt as to their existence had ever been heard.

"Placed there in the most alarming crisis of our state, it became Mr. Hastings to let his conduct be equally remote from tyrannous severity and impolitic mildness and moderation—We must feel the necessity that the controul of Government should be firm and prompt when Rebellion menaced its power—its forbearance to punish was criminal neglect, its mildness and humanity were political ruin. We had seen lately the dreadful result of a system of Government marked only by concession and by mercy—the reins of Power must be grasped by decisive and unshrinking Justice.

"Such, I trust, will be found to have been the conduct of the Gentleman before you. Leaving his motives and his conduct to the scrutiny of this High Tribunal, I can only say for him, that upon the wisdom and the honour of your Lordships' he humbly relies with security of confidence."—The Court then adjourned.

NINETY-SEVENTH DAY.

WEDNESDAY, February 20.

The whole of this day was consumed in reading letters and minutes of Council respecting the Begum charge, and in disputes between the Managers and Mr. Hastings's Counsel, whether the whole of each paper, or only such parts as related to the Charge, should be read.

After much *pro* and *con*. sparring, it was agreed to by Counsel, that the whole should

should be entered as evidence. Mr. Sheridan, Mr. Fox, and Mr. Burke, were the Managers that contended for this point.

The Court adjourned to

TUESDAY, Feb. 26.

NINETY-EIGHTH DAY.

Mr. Law called Capt. John Gordon to give his evidence upon the Begum Charge. This gentleman is the only surviving officer whose personal knowledge goes to the proof of the Begum's rebellion.

He gave a clear and very material evidence, to prove the attack he had met with in his march; and the forces which, when he would have crossed the Nulah into the Begum's territory, he found drawn up to oppose his messenger, some of whom threatened to fire at him, if upon an elephant he should persist in crossing the river. The Nulah is about 100 yards over—it was by no means difficult to hear and see what was doing across.

Upon the cross-examination, which was extremely tedious, and interlarded with sometimes indecent asperities and ebullitions of personal spleen, Capt. Gordon said, they were the same troops on the *other* side of the Nulah as had attacked him on his march this side. Upon which Mr. Burke proceeded to demand very acutely a reconciliation of this ubiquity—and further, how the witness could suppose such attack as he met with in his march, to come from the direction of the Begum rather than in the Nabob, as he was then in the *particular* jurisdiction of that Paramount Sovereign, and not upon the holden Territory of the Begum?

And again, the witness having said, that upon his crossing, but a *few* of the troops remained, and the rest had fled and dispersed, Mr. Burke demanded how these Nabobs had possessed the boldness to attack him when he was in formidable force, and in a panic fly from him when in a feeble way he advanced with inferior numbers?

He asked whether reimbursement had not been obtained of his *loss*, real or pretended? The answer was, "from the Nabob, through Mr. Middleton." The witness withdrew the Nabob, and said simply "from Middleton." This was keenly followed up, by Mr. Burke's desiring to know, if the witness was sure that the Nabob had not been compelled to pay for the wrongs done, as he said, by order of the Begum?

About four o'clock, Mr. Burke said that he had finished with Captain Gordon for the present, but that he would call him again on the next day that the Court met. Mr. Law instantly arose, and said he claimed *as a right*, what the laws of his

country entitled him to expect, that the Managers should *finish* their cross-examination before they called another witness.

Mr. Burke, Mr. Adam, and Mr. Taylor, opposed this. Mr. Law, confiding in the justice of his objection, persisted, but without further loss of time, by urging arguments in support of an indelible truth. The Chancellor said, that if the Counsel persisted, they had a right to do so, but that the Managers might consume the remaining time of the Court by questions, and to have the privilege of pursuing their cross-examination on the next day.

Upon this Lord Stanhope arose, and expressed his surprise at what had fallen from the learned Lord; adding, that he could not suspect the Managers to be capable of so scandalous a proceeding, as to ask frivolous questions for the sake of continuing an examination to the following day.

Mr. Burke, not understanding what was said, accused Lord Stanhope of attacking *the Commons*, by pronouncing their conduct to be *scandalous*. Lord Stanhope replied, by repeating what he had said.

Mr. Burke and Mr. Adam began to re-argue the point; but the Lords, *with one voice*, desired them to go on, which they did, and finished with Captain Gordon.

Captain Williams was then called up, and as his examination was likely to be long, the Court adjourned at five o'clock until

WEDNESDAY, Feb. 27.

NINETY-NINTH DAY.

Captain Williams was called again to the Bar, and the Counsel were proceeding with all possible dispatch in his examination, when first Mr. Burke, and next Mr. Sheridan, made observations as to the re-hearing of his evidence.—They argued and argued on the subject, until the Chancellor at last observed, that they had better permit the Counsel to proceed.—They took his Lordship's advice for a few minutes, and then again interrupted, and began an examination of their own.—Some progress was made, and Captain Williams gave clear and pointed answers to such questions as were put to him by the Counsel, the Managers, and the Lords.—The substance of his evidence went to prove the hostile acts of the Begum. Mr. Sheridan, contrary to all former practice, broke in upon the examination in chief: Objections were made, and the day nearly spent, when Mr. Hastings prayed the attention of their Lordships for a short time. He said, it was with pain, with anxiety, but with the utmost deference, that he claimed to be indulged in a most hum—

ble request he had to make; which request was, that their Lordships would, in their great wisdom, put as speedy a termination to this severe and tedious trial as the nature of the case would admit.

He understood from report, that this was to be the last day he should have an opportunity of continuing his defence until the return of the Judges from their different Circuits. This was a circumstance most peculiarly hard indeed. He had now been five years on his Trial before the Court, and, he might say, eight years on his defence, and on the charges against him, since he was first accused by the House of Commons. It was a space not to be found in the annals of history, for any court of judicature to sit on the trial of one individual.

He requested their Lordships to consider the heavy expence he experienced on this occasion, and particularly that which attended his witnesses, many of whom were brought over from India, and detained here from their natural business and their respective families. They waited, not as ordinary witnesses do, day after day, but year after year, in hopes of being examined; but such was the tedious process of the business, that in order to prevent their property from going to ruin, many were obliged to return; and on others the hand of death had seized, and irrevocably called away that testimony which would have been of the most essential service to his defence.

He wished not to prels for more than what was common justice—what were the rights of a British subject according to the Constitutional Laws of his country; and therefore his prayer was, that the Trial might continue, without any long adjournment, as suited their Lordships convenience, until at least the present witness had finished his testimony.

He had entertained a hope of its being the universal wish to bring the Trial to a close in this Session. By a close, he meant a conclusion of the process on both sides, and the judgment of the Court. To any other he never would consent, and therefore it was that he was anxious for a judgment, while he had a chance for living until it should take place.

Mr. Hastings next mentioned the steps he had taken to get an attendance—his Petition to his Majesty; and he professed that he had hopes from what was lately done in the House of Commons, which

met the universal approbation of the Country *; all these hopes were now vanished, and he threw himself upon their Lordships, of whom he never had thought or spoken but with the utmost respect and confidence.

The Manager on his left hand (Mr. Burke) had said, that he had a *Right* to desire their Lordships to adjourn whenever he pleased. Mr. Hastings said, that he claimed the privilege of a British subject, which was, that he should be *intitled* to every privilege claimed by his Prosecutors, and he had a right to expect judgment on a criminal cause *without delay*. That there had been great and notorious delays was well known, but in no moment of vexation or impatience had he imputed those delays to their Lordships.

He would explain to their Lordships why he was so anxious to finish this Charge. The Gentleman now under examination, Captain Williams, had attended year after year for five years. He came from South Wales, and if his evidence should be only half finished, he must again return in April, or be detained from his family until that time. Another gentleman, Captain Shulldham, came from Exeter; a third, Major Lumsdaine, from the North of Scotland. Mr. Hastings said, it would be cruel indeed if he should be under the necessity of detaining those gentlemen so long a time. Another Officer, Colonel Duff, whose love of justice led him to give evidence on the part of Mr. Hastings, was in England, and in that Hall in the *second year* of the Trial. He had returned to India, and had served the *whole war*, in high command under Lord Cornwallis. He was very lately arrived in England, having left India in profound peace; but a *new war* having broke out, Colonel Duff had again offered his services, “and what right,” said Mr. Hastings, “have I to expect that “Colonel Duff will neglect his duty on my “account?” Another circumstance had only come to his knowledge yesterday:—Mr. John Pendrice Scott, of Tandy, whose name had been so often mentioned, was on the point of leaving Ireland, to be a witness in this cause, and died just as he was about to leave his own house. “And what right,” said Mr. Hastings, “have I to suppose, “after so many examples of mortality before my eyes, both in the Court and “the witnesses, that my life will last for so “many years to come? I had a hope, “from the unanimous wish expressed by the “House of Commons for a period being

* This alludes to a motion made on Feb. 11 by Major Maitland for appointing a Committee to consider of the best means of expediting the Trial of Mr. Hastings, and which was agreed to, and a Committee appointed.

"put to this Trial, and from what *I know* to be the sense of the Publick, that no further delays would take place. Those hopes are now vanished, since it has proceeded *more slowly* from the time that unanimous wish was expressed, than it had done at any former period. What I therefore pray and intreat of your Lordships is, that you would be pleased to sit until this Charge is finished, and after the Circuits, day by day, until judgment shall be pronounced."

Mr. Burke declared, that it was the Commons' wish to expedite the Trial as much as that of Mr. Hastings.

Mr. Sheridan got up to speak, when an adjournment was moved, and the Lords determined to meet on

THURSDAY, Feb. 28.

ONE HUNDREDTH DAY.

This day was productive of extraordinary events. The Lords assembled at twelve; but there was no House of Commons. After some time the Managers attended, and then Captain Williams was called to the bar, and examined at great length by Mr. Burke. The Lords retired at twenty minutes past two, to receive his Majesty, and at four o'clock returned to the Hall, when the cross-examination of Capt. Williams was renewed. The only interesting part was that of the treatment of Rajah Muttapha Cawn, executed by the orders of Col. Hannay, whose death is stated to have been an ostensible cause of Ajut Sing's Rebellion.

Capt. Williams, when asked to this point, replied, that he thought it unlikely Ajut Sing should say, "They have murdered our Rajah, and therefore I will be revenged;" and for this reason, that he himself was a Hindoo of a high and most ancient cast, and Muttapha Cawn a Mussulman Rajah, residing with his banditti in a forest, above an hundred miles from Ajut Sing's dominions.

Mr. Burke then begged the attention of their Lordships to a few questions from a Brother Manager.

Mr. Sheridan rose—He said, he regretted that the questions he had to put, from the nature of the examination, could not be few. He was yesterday, when the Lords rose, about to make a proposition to the Council, after the gentleman at the bar had made the speech to which Mr. Burke replied:—an honourable Viscount, how-

ever, while he was speaking, had, not seeing that he was addressing their Lordships, moved to adjourn.—Any disrespect could not be intended individually or generally (the Noble Lord said, here, "*No, certainly not*"); the Managers were always respectfully attentive to their Lordships, and had themselves a right to the attention and respect of every Noble Peer. "But," said Mr. Sheridan, "peculiarly interested in the establishment of *this Charge*, I felt in a strong degree the force of the remarks urged yesterday at your bar, relative to delays, the blame of which rests here and elsewhere—if blame be imputable.—But standing here, as I do from conviction and duty, to arraign the gentleman at your bar, I am inclined to make a proposition calculated to save the time of all parties.

"It will be remembered, that in the course of yesterday's examination in chief, I stated that not an iota of the testimony of the witness could be received as evidence, being all of the nature of *hearsay* and *rumour*—That there was a link of the chain wanting, to make it *fit* and *proper* evidence—namely, the proof that such rumours had reached Mr. Hastings, and had become the grounds of his action."—This link, he understood, was to be supplied by the learned Counsel, who he imagined by inference wished their Lordships to believe, that the interview which took place at Chunar between Mr. Hastings and Colonel Hannay, had produced those communications from the Colonel to the Governor General, that he had himself received from the reports of the country. If this had been meant, the Managers were prepared to prove the contrary.—What he had to propose, therefore, was, that the learned Counsel should produce this link, as a mode of avoiding the waste of time, in examination quite irrelevant, and which could not be received as evidence on either side.

Mr. Plumer contended that it was evidence, inasmuch as such reports being the *res gestæ* of a country, afforded a fair presumption, that, circuitously or directly, they came finally to the ears of the Governor General. Mr. Plumer, sincerely, remarked upon the implied censure of the Honourable Manager upon Mr. Burke's cross-examination.

* Mr. Burke afterwards in the House of Commons mentioned this circumstance to have arisen from the Lords having assembled earlier than usual, without having sent word to the Commons; the consequence of which was, that there was no House at the proper time; and that the Managers under these circumstances had felt it necessary to go into the Hall without a House having been previously formed. Mr. Pitt moved, that the House approved their conduct, which was agreed to *nem. con.*

Mr. Sheridan replied, that the learned Counsel, he saw, fluffed their ground of yesterday—and since they meant to hold such testimony for *admissible* evidence, it was fair for the Manager alluded to, to rebut it by, if they would, *irrelevancy* similar to their own.—Of the competency of either to adduce such evidence, it remained for their Lordships to decide.

Mr. Plumer here read from some former proceedings, where the Managers had argued the acceptance of *rumours* and *reports* as evidence on *their part*, having reached the ears of the defendant.

The Lord Chancellor remarked, that he had laid down this rule—"That here there was a distinct proposition made by the Managers to the Counsel, for their acceptance or rejection.—They had rejected it—the cross-examination, therefore, must go on.—To interrupt the proceedings by a debate upon a matter then no question, was indecent and irregular.—If they would not receive his *rule*, he must look to the House for *support*."

This checked the levity of retort; and Mr. Sheridan saying he should cross-examine Capt. Williams to-morrow, their Lordships adjourned to

FRIDAY, March 1.

ONE HUNDRED AND FIRST DAY.

To understand the drift of the evidence given this day, and to elucidate the cross-examination, it will be necessary to state some circumstances that occurred in the last Parliament.

Amidst a very large mass of matter framed into Articles by the late House of Commons, and abandoned by them, there was a charge, that Capt. Williams, or some British Officer, had caused Rajah Muttapha Cawn to be put to death; and the same charge calls this execution a *cruel and atrocious murder*. Captain Williams petitioned the House, either to bring a direct charge against him, or to give him some satisfaction for so foul an injury. By an appeal to the Journals of the House, it will appear, that this Article was voted without the Members having had an opportunity of looking into it. Captain Williams could obtain no sort of satisfaction, and he represented the very peculiar hardship of his situation in a series of Letters addressed to Mr. Francis, who had taken an active part in this business. Here the matter rested, but Captain Williams had the pleasure to hear his Majesty's Attorney General express in the House his sincere concern, that he, as a Member, should appear to call that "a *cruel and*

atrocious murder," of which he never had heard one word.

To this business of Muttapha Cawn Mr. Burke examined Captain Williams, who shewed all the eagerness an innocent man could do, to wipe off the foul reproach which the last Parliament had cast upon him; and it appeared by his evidence, that when he relieved Major Lambstone, early in 1781, in the command of Corrompore, a man of the name of Muttapha Cawn was delivered over to him a prisoner, and under sentence of death; that he received a positive order from his commanding officer, Colonel Hanny, to carry this sentence into execution, which he did; and he stated, that the man had for many years been a freebooter and a rebel; and that in the perilous situation in which he was, he found it absolutely necessary to obey the orders which he had received.

The whole day was expended by Mr. Burke and Mr. Sheridan in questions and cross-questions upon this point, and relative to a Persian letter which Capt. Williams had found amongst some papers. The principal object was to discredit this letter produced to the Court by the Counsel of Mr. Hastings.—The point upon which the Managers gained ground was the *truth* of the *facts*.

First.—What Rajahs were well affected to the English in the territories of the Begums? The answer was, *one* Rajah and a Ranny.

Secondly.—In the part of the paper which enjoins the binding down of the Rajahs not to lend them assistance, the question went to demand who were the persons alluded to? Could they be the *single* Rajah and the Ranny who were well affected to the English, or the disaffected Rajahs?

Captain Williams replied, after some hesitation, that it was his opinion it referred to the *disaffected*, and not to those inclined to *favor* the Company's cause.

Mr. Sheridan, in the course of the examination, asked upon the learned Counsel, to know whether they would abandon this paper, or if they meant to establish it by any other mode than that of the witness at the bar?

The Counsel notified to the Managers, that such was their design.

At five o'clock the Court broke up.

SATURDAY, March 2.

ONE HUNDRED AND SECOND DAY.

The business on this day commenced by the Lord Chancellor's stating, that the House observing the unfortunate delays which had occurred by the Managers interrupting the examination of Mr. Hastings's

Hastings's witnesses, and by observations, had determined, that in future, until the examination in chief was finished the cross-examination should not begin: and that no remarks should be made, which were in their nature observations on the effect of evidence. The same rule was to be observed by the Defendant's Counsel.

Mr. Burke made a speech in order to express his submission, and declared, that so extremely *anxious* were the Commons for a very speedy close to this *unprecedented trial*, that if the Defendant's Counsel wished it, and their Lordships chose so to determine, they were ready to go on during the circuits; observing, that the questions which may arise in that interval, may be reserved for their decision.

As soon as Mr. Burke sat down, Mr. Dallas called Lieutenant Shulldham, who, in reply to the several questions put to him, said, that he had been ten years in India, and returned about two years: that at the time of Cheyt Sing's insurrection he was in Major Macpherison's regiment at Cawnpore; that it was then currently reported, and universally believed, that the Begums were hostile to the British Government, and had afforded military aid to Cheyt Sing; that he had not then a shadow of doubt as to the truth of those reports, nor had he now; that he remained in India nine years after the event, and he could safely swear that no one circumstance had come to his knowledge which led him to doubt it, nor was it doubted by any one person of any description in India with whom he had ever conversed, and he had conversed with great numbers of natives, as well as his brother officers, on the subject. That if any one were asked to bring strict legal proof of the existence of a design some time ago to overturn this happy Constitution, he might not be able to do it, yet the fact was of such notoriety, that assertions had been formed throughout the kingdom to counteract the design. That the battalion to which he belonged marched from Lucknow to Fyzabad, and that the Eunuchs Jewar and Bahar Aily Cawn were under their charge; that he had often seen and conversed with them; that they were attended by a great number of their men servants, and sustained no hardships of any kind, and complained of none; that in order to induce them to pay the balance of the sum they had agreed to pay, they had been for a short time in irons; that he was present when a smith was taking the irons from one of them, and that they were very little heavier than the gold or silver ornaments which the women

of that country wear round their ancles. He was cross examined by Mr. Burke and Mr. Sheridan, and gave his answers in the clearest terms. Mr. Sheridan asked, why there should be a necessity for a smith to take off the irons, if they were so extremely light? To which Mr. Shulldham neatly replied, that unless they had been riveted, slight as they were, they would themselves have taken them off.

Mr. Sheridan asked if it was not known in India that Mr. Hastings had been *many years* impeached on this Article? Mr. Shulldham said, it certainly was universally known in India. This led Mr. Dallas to ask, if the circumstance of being impeached had hurt the character of Mr. Hastings in India? To this Mr. S. replied, that when he spoke of Mr. Hastings, he spoke of a man with whom he was not personally acquainted; that he spoke from no sense of personal favours received, since none had been conferred; that he could say with the utmost confidence, there never had been a man whose character stood higher than that of Mr. Hastings; that as Governor there never was a man more able, no; as a private character, more amiable; and that this was the general opinion of India, both amongst the natives and his own countrymen, and that it was not at all shaken by the Impeachment.

The next evidence was Colonel Duff. This officer said he had been in India about thirty years; that he had returned to England since the commencement of this Trial, stayed a short time, went back, commanded the artillery under Lord Cornwallis in the late war, and arrived again in England two months ago; that he was in India during the insurrection of Cheyt Sing; that the disaffection and hostility of the Begums was a fact at that time universally believed; that he himself had then no doubt of it, nor had one circumstance that he had since heard led him to doubt it, nor could he believe any man in India ever did doubt it; that in the years 1781 and 1782, the Company's situation in India was most dangerous and alarming, much more so than at any other period before or since; that the troops were many months in arrears, and that the most strenuous exertions were necessary to preserve India to Great Britain.

With respect to the Bullock contract, Colonel Duff deposed, that it was a service on which the success of every operation in war depended; that good bullocks never could be procured by an annual contract given to the lowest bidder; that under Mr. Crofts's contract, the bullocks were

were excellent, the regulations highly proper, and rigidly enforced; that 6,700 bullocks were by no means too large a number; that so far from one driver being too much for every two bullocks, he thought there should be *two* to every *three* bullocks; that with regard to Mr. Hastings, though he had in sight Mr. Hastings had in his public character done him no favour, but rather the contrary on one occasion, yet that circumstances should not prevent him from doing justice. He had many years ago concurred with some hundreds of his brother officers in transmitting to Mr. Hastings the sense that the Army entertained of his great merits and public services; that he knew the opinion of India to be very highly in favour of Mr. Hastings, and that nothing which had happened during this Trial had changed that opinion, but quite the reverse; that no man stood higher in the general estimation, or had performed more important services; that the people of India, Europeans and natives, looked upon Mr. Hastings to be a very *great, and a very injured man*; and, added Col. Duff, *this is my opinion too.*

In the cross-examination, Colonel Duff was very pointed. Mr. Sheridan asked him, to what *mismanagement* it was owing, that the army had been so much in arrears in 1781 and 1782? The Colonel replied, to no mismanagement at all, but owing to the very large sums sent by Mr. Hastings to support the war in the Carnatic, and on the Malabar Coast. He was asked, when he heard of the disaffection of the Begums? He said, as soon after the revolt of Cheyt Sing as the news could arrive—and that he had heard it repeatedly since, and had not a shadow of a doubt in his mind on the subject. In reply to Mr. Burke's questions, he said, that the Bullock Contract met the warm approbation of Sir Eyre Coote, the Commander in Chief in India, and of General Hibbert, the Provincial Commander in Chief.

Major Lumisdaine was next called, and gave the same pointed evidence as to the existence of the Begums' disaffection, which he said was a fact universally believed in India, and never doubted but in England. He said, that nothing could be so alarming as the state of the British Empire in India at the close of 1781, and in the first months of 1782; that it was his firm opinion the existence of our Indian dominion depended at that time on the life of Mr. Hastings; that the army with which he was acting was six and seven months in arrears; that he is confident the army must have been disbanded, without

fore assistance, in a very short time, *their* distresses were arrived at so great a height; and that the brigade under the command of Colonel Sir J. Cumming could not move for want of pay; that in February 1782, they were relieved by the Vizier having paid the Company a large sum of money, which, as he understood, was a part of his father's treasures that he had taken from the Begum at Fyzabad; that without such a seasonable supply, the most ruinous effects would have followed; that he had served in India until the close of Mr. Hastings's administration; that no man ever stood higher in the opinion either of the natives or of his own countrymen, or was more esteemed either as a public or a private character. He said, Mustapha Cawn, the man whose death was termed by the late House of Commons a cruel and atrocious murder, was sent a prisoner to him in May 1780, by order of the Nabob, and under sentence of death; that he received very strict directions for the guard of his person; and when he delivered over the command to Captain Williams in 1781, he reported Mustapha Cawn as a prisoner under sentence of death.

Mr. Burke put a variety of questions to the witness; as for instance, Who appointed *him*? The Governor-General and Council.—Who Colonel Hannay? The same persons.

We observe this, *here*, because the Counsel affirmed it not to be a *fact*—and Mr. Burke complained, that they were instructing the witness by the remark.

Colonel Hannay having been dismissed the Nabob's service, and the witness having said that the English Government had unquestionably great influence in the Vizier's Court, Mr. Burke desired to know, this circumstance considered, whether it was likely the Nabob would dismiss him without some venious cause of displeasure?

The witness knew nothing of causes moving the Nabob to dismiss his servants—but should suppose not. However, he imagined such causes must have ceased, as he knew the Nabob had afterwards solicited the Colonel's re-appointment.

Mr. Burke then demanded to know whether the Major knew any thing of a letter, wherein the Nabob had written, by solemn adjuration before the Holy Prophet, “to fly his territory, and go to the Company's settlement, if Colonel Hannay came near him?”

The witness never heard of it, nor of any letters to that effect. Mr. Burke then wished to read the letter, and worded his question upon an assumption of a *false* *fact*

said, namely, that Hannay was appointed by the Governor-General and Council.—Mr. Burke shewed that the witness had *said* so, and that he was right in refreshing the memory of the Major, since there were memories of such a nature as to need the production of the object of interrogation, to recall their recollection from oblivion.—He intanced the unfortunate *memory* of Mr. Middleton, which never recalled any thing without this process.

The cross-examination then went upon Genu Roy's expulsion by order of Hannay. Major Lumisdaine himself drove him from his country by taking his fort.—By the Caboulial settled with him he had paid 30,000 rupees rent, which Hannay insisted should be doubled—his lands being worth 90,000.—He refused assent, and suffered expulsion.—The plunder of the fort sold for 50l. sterling, and was given to the widows and children of the 100 Sepoys lost in taking that place. Mr. Burke then desired to know if any provision had been made for the Zemindar's wife? Answer—"No; there was no cattle upon his estate to sell, and the wife was fled, I suppose, with her husband."—We must therefore suppose that the cattle were taken with him—for, to produce thrice the value of his rent, he must have had cattle to labour the land.

Major Lumisdaine, when speaking of the character borne by Mr. Hastings in India, said that the Natives and Europeans held him in veneration, and in as profound respect as could attend upon any man.

Some questions in the course of the day were put to Colonel Duff, as to his knowledge of *pr. sentis* received by Mr. Hastings.—He was not in his confidence, and knew nothing of the matter.

The Court adjourned to

FRIDAY, April 12.

ONE HUNDRED AND THIRD DAY.

Major Lumisdaine was called up and examined by the Counsel for Mr. Hastings, with respect to the situation of the province of Oude, at the time in 1781 when the Begums were charged to be in a state of rebellion. His evidence went to prove the affirmative.

His cross-examination was finished about half past two, Mr. Burke being the only Manager who asked a question; and, to men of common conception, there was not one single point on the cross-examination which could, under any possible construction, apply to the case of Mr. Hastings.

Mr. Wombwell was the other Gentle-

man called. Mr. Dallas asked him a very few questions, and his answers confirmed the evidence of many other respectable witnesses, as to the universal belief that obtained in India, of the disaffection of the Begums. Mr. Wombwell also gave a very clear and weighty evidence as to generalities in favour of Mr. Hastings; it tended to shew the provident wisdom of his Administration, and the reverential esteem in which he was holden by the Asiatic world.

In the course of his cross-examination the Counsel remarked, that Mr. Wombwell had been latterly ill, and that thereby his memory had partially suffered—so that when he came to be pressed by Mr. Burke and Mr. Anstruther as to the transactions which were alleged to have happened when that Gentleman was at Oude, either as Treasurer, Accountant, or Auditor of Accounts, he referred to his documents of office delivered in to the Company for particulars with which he could not charge his memory, and for which he seemed to take unnecessary shame to himself that their remembrance was no more.

Mr. Burke demanded of Mr. Wombwell the amount of the one and a half per cent. commission upon the receipts of his office. He readily answered, that he received it only about a year and an half, but it might be 15,000l. in the year. The Honourable Manager wished to attain some supposed private accessions to this splendid appointment; but the witness candidly affirmed at once that he had nothing to conceal, and that what he received was all of it matter of official record.

Of Major Palmer's list of Salaries, Pensions, &c. paid in Oude, Mr. Wombwell ratified some, but was confident the greater part were not paid by him while he was in office there.

Mr. Burke kept Mr. Wombwell two hours on his cross-examination as to salaries or pensions that he had paid to English Gentlemen in Oude, from the Nabob's Treasury; question succeeded question, until the patience of every human being present appeared to be entirely exhausted; many of the Lords shewed strong signs of impatience, and the Archbishop of York declared, with a very strong and pointed emphasis, that the conduct of Mr. Burke was *illiberal*. To this remark no reply was made; and, Mr. Wombwell being discharged, at half past five the Court adjourned. Neither Mr. Fox nor Mr. Sheridan were present.

THURSDAY,

THURSDAY, April 18.

ONE HUNDRED AND FOURTH DAY.

Mr. Plumer, in defence of Mr. Hastings, called Mr. Anriol, whose evidence was briefly as follows:—In 1770 he went to India a Writer—in 1775 he became Secretary to the Board, and continued so until he left India.—In 1781 the Bengal Treasury was insolvent on account of the vast expences of the war; every mode of raising money by loan was exhausted, and it was only from the tributary Powers that resources could be drawn: That Madras and Bombay were dependent on Bengal for remittances by bills, which frequently remained unpaid a long time; and that those Presidencies were likewise in great distress, Hyder Ally being at the gates of Madras, burning and devastating the country. This was the state of affairs when Mr. Hastings demanded assistance from Chetty Sing and the Begums; who, instead of affording any, actually created a rebellion in Oude and Benares. Respecting the rebellious disposition of the Begums, Mr. Anriol never heard any doubts by any of the Members of the Board or other persons, nor had he any doubts of the facts. Mr. Stables had made a minute respecting the affairs of Oude; but upon cross-examination by Mr. Burke, it was not the opinion of the witness that it expressed any doubt as to the disaffection of the Begums. The last question was, “What was the conduct and character of Mr. Hastings, as Chief Governor of India?” Answer.—“No man that ever lived knew the affairs of India so well: as a great public officer, he ever exerted himself to improve the country, to make the individuals comfortable, at the same time to promote the interest of his employers and the Mother Country. As a private man, his sincerity, to his friends and his benevolence to his inferiors were proverbial. His charity was unbounded; and, with a very few exceptions, all ranks of people in India adored him as the saviour of the country, and as great and virtuous a character as ever existed.”

Captain Syme proved, that Mr. Scott of Tandy, in Oude, who could have given full proof of the traitorous designs of the Begums, died last February in Ireland, just at the period when he was preparing to come to England to give evidence upon this trial.

Mr. Paxton proved, that Major Macdonald, who was some time in England to give evidence to the same effect, was returned to India.

Mr. Wright, Accountant of the India-House, proved, that Sujah ul Dowla, when he died in 1779, was indebted to the Company in the sum of four hundred and fifty thousand pounds—that the sums drawn from Oude up to the year 1785 amounted to four millions; and he delivered an account of the expences of the war.

Mr. Hurlson, from the India-House, proved, that there was no document in the House, or in the correspondence of Mr. Bristow, the Resident at Oude, to prove that the Begums ever claimed the Jaghires during life, but that they were always considered as granted during pleasure.

A number of documents were afterwards read, and at five the Lords adjourned.

SATURDAY, April 20.

ONE HUNDRED AND FIFTH DAY.

The Court on this day completed all the evidence on the Begum Charge. The day was spent in producing a great number of letters; extracts from many of which had been read by the Managers; and the remainder was now given, that the Lords might have the subject complete and ungarbled before them.

Mr. Plumer very neatly opened the evidence he was offering, and observed upon the strange and unfounded assertion of the Managers, as it was entered on the minutes of evidence. He observed, that they had stated, that after the month of September 1781, no state necessity existed in India. Mr. Plumer said, he would produce evidence to prove, that for two years subsequent to this period, the distress was of the most serious nature; that Madras and Bombay, receiving no pecuniary assistance from England, as they had done in the late war, depended entirely on Bengal, and owed their preservation solely to the exertions of Mr. Hastings. Mr. Plumer then produced a variety of documentary evidence. The only part worthy attention was the opinion of Sir John Shore (who now succeeds Lord Cornwallis as Governor-General), that the Jaghires granted to the Begums by Sujah Dowlah, the late Nabob, were refundable at pleasure; and that such had always been the Mahomedan law in the empire of Hindostan. This being a point of great importance, to justify Mr. Hastings in seizing those estates to answer the present Nabob's debts, Mr. Burke objected to its being read. He said, that the Commons had nothing to do with Sir John Shore's appointment, but that the Managers knew that he was implicated in the crimes charged upon the prisoner

prisoner at the bar, under whom he had for many years managed the revenues of Bengal; that the Managers had arraigned his conduct; that he had written part of Mr. Hastings's defence, and that he knew nothing of his knowledge of the constitution of India; that as to his being appointed Governor-General of Bengal, so had Mr. Hastings four several times by the Legislature, though the Commons had since thought it right to impeach him.—No answer was given.

Lord Chancellor.—“I take it to be the rule that the opinion may be read, subject to the observations of the Honourable Managers when they make their reply.”

The last head of evidence went to prove, that Sadit Ally, the Dewan (Minister) to the Begums, was likewise a traitor; and that he instigated them to rebel against the Company, in the years 1781 and 1782. This proof was chiefly grounded upon his former conduct in the year 1776, when he had clearly evinced the same disposition. The papers were read, but Sir Gilbert Elliot strongly opposed their being entered as evidence.

After a long argument, the Lord Chancellor took the opinion of the Judges; and ordered the whole of those documents relative to Sadit Ally to be struck out.—And here ended this long Defence to the famous Begum charge, in the opening of which Mr. Sheridan, in his three days speech, captivated, astonished, and enraptured the polite and best-informed audience in the world.

ONE HUNDRED AND SIXTH DAY.

THURSDAY, April 25.

Mr. Burke desired that an error which had crept into their minutes might be corrected. It had been inserted in them, that the Managers had asserted their right to stop the examination of witnesses; but they had only said it was their right to propose, and their Lordships to determine, when it might be proper to adjourn.—This error was allowed to be amended.

Mr. Plumer then proceeded to sum up the evidence on the Begum Charge. He, in a very modest exordium, professed his inability to give force to the *truth* their Lordships had heard, neither could he suppose, that any weight would, from his consequence, result in addition to the strength of argument. He began by reminding the Lords, that nearly eight years were elapsed since the Charge was first brought forward. He quoted those strong, forcible expressions of Mr. Sheridan; describing Mr. Hastings as the most cruel, faithless, tyrannical, and corrupt man, that any age, or any nation; had

produced. After remarking upon the great responsibility which Mr. Sheridan had incurred by his assertions, it should be his humble province, he said, to examine whether *facts* or *evidence* would in and degree justify such language. He said, that if ever man's *general character* could be known, Mr. Hastings's must be; that the unprecedented, and alarming length of this Trial had enabled the Managers to obtain every information of every kind from India; that they were themselves men of the highest talents and infinite industry; that they were assisted by able and laborious Counsel; that they represented the whole people of Great-Britain, in whole name, and for whom they prosecuted. Added to this, it was well known, that *truth* was strengthened in its operations in the human mind by time. But would there be a *man* now found hardy enough to subscribe to that character which one of the Managers had given of Mr. Hastings?—He would venture to answer, No, *not one*. Their Lordships well knew the *opinion* and the *voice of India*. The proceedings daily held on the state of the East-India Company sufficiently shewed the *sense* entertained at home of the advantages resulting from the long Administration of the Gentleman now under trial before their Lordships. Great weight was laid upon the charge he was now to combat.—If what was alleged in the *second* Charge could be proved in the strong language that had been applied to Mr. Hastings.—“All the Crimes that History ancient and modern had collected—the extensive field of moral turpitude, could not discover any thing that might compare with the Guilt of the Defender.”

The learned Counsel was by no means aware of much difficulty in his task—he was confident he should clearly demonstrate, that the whole Charge originated in *error*, and by perpetual error had been endeavoured to be established.

It resolved itself, Mr. Plumer thought, naturally into two heads, each of which he should examine minutely:

1. The Retumption of the Jaghires from the Begum.

2. The Confiscation of the Treasure by the Nabob.

Mr. Plumer, through an amazing variety of evidence, followed and concentrated to a focus, the light that could be thrown upon the nature of Jaghires. A question, he said, had been put by their Lordships to the Managers *six years ago*, as to the tenure by which the Begums held their Jaghires; to which one of the Managers, without any hesitation, replied, that the

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Begums, and their Ministers, *always* contended they were for life.

Mr. Plumer said, he never could suppose that the Managers or their Council intended to deceive their Lordships; that he himself believed they spoke truth; but, after a most accurate search, he could not find that they had at any one time so contended. But, not satisfied with this, he had called the proper officer from the India-House, who had expressly searched the Records, and who deposed, upon oath, that he could not find one single instance, in which either the Begums or their Ministers contended that they were for life. In a most feeling manner Mr. Plumer then called to the recollection of their Lordships the treatment which Mr. Hastings had received from the Managers. Though the multiplicity of business that he had to transact was well known, yet if in the perusal of hundreds of volumes of important matter, a mistake of the most trivial nature was found to have been committed by him, no allowance was made—*False, false, false*, was repeated, and he was compelled, day after day, month after month, and year after year, to hear the foulest invectives uttered, because he had made, on some occasions, the most inconsiderable and unimportant mistakes, by Gentlemen who had roundly asserted, in a Court of Justice, that certain declarations *always* were made, which, upon the fullest investigation, were, as it now appeared, *never made at all*.

Here Mr. Plumer said he would leave this subject to the reflection of the Managers themselves.

The aggravatory matter of the Charge was, that these Ladies, the Begums, were *pious* and *pacific*; that they were superior to all worldly concerns, and indeed resembled "*Saints* enshrined in some Sanctuary," rather than the turbulent Rebels, who pointed artillery against power, and hatred against filial affection.

The *pacific* dispositions of these Ladies were visible in the Body of 10,000 Troops which they kept up. The *pious* aversion to all worldly concerns would be best demonstrated in their expressions. In one place their threats are vehement—"If I am expelled the Land," says the mild Lady, "I'll make it unfit for any other Creature to inhabit." And in another instance, the *pious* Saint prays to God, "that no other Soul may ever be at rest in it."

If there had even existed, what was denied, an express grant of the Jaghires for life, Mr. Plumer contended, that from

the general principles by which lands are holden, it is competent for the Government, the interest of the whole State demanding it, to *resume* lands, upon making a proper compensation to the dispossessed.

Upon the second head, the *confiscation* of the Treasures in the Zenana of the Munny Begum, Mr. Plumer proceeded to prove, that they were lain by with miserly sedulity by Sujah Dowlah, in the latter part of his life, to answer an emergency. That the Begum never did receive them as a gift from her late husband, but that they were the property of the State. The law, if the property had belonged to an individual, gave her, as widow, only *one-eighth* of the sum; that, however, previously subjected to the discharge of all just debts of the deceased.

The Council, by a very moderate statement, made it appear, that Sujah Dowlah owed at the time of his death Two Crores of Rupees, the full amount of the treasure to which she laid her claim, but which she held only in trust for her son Asoph ul Dowlah—The young Prince, when pressed for the payment of the arrears due to his troops, very naturally replied, that it was not in his power to pay them, his mother having seized those treasures which, accumulated by his father, should have been delivered to him for the emergencies of the State.

The Managers had talked of *subornation of letters*, and had treated the testimony of Sir John Shore with levity and scorn, as the confederate of Mr. Hastings—Mr. Plumer remarked that this Gentleman had been so highly esteemed elsewhere, that he had been sent for by Government, without any solicitation he believed on his own part, to succeed Marquis Cornwallis in his important station. What they had said of the correspondence of Middleton, they could hardly say of that of Bristow, and yet every individual spoke and wrote the same facts, namely, that there was no right in the Begum to the treasures, and that, instead of any persecution on the part of the son, the mother had repeatedly manifested her aversion and jealousy of the young Vizier.

Mr. Plumer next alluded to the very extraordinary evidence given by Mr. Goring for the prosecution. Unaccountably indeed, he had been examined as to his knowledge not of the widow of Sujah Dowlah but of Serajah Dowlah, the father of Meer Jaffer. He was asked how the widow lived, and upon what? and he answered, "*Very magnificently*, and he supposed upon the treasures found in her Zenana." Now it was very well known,

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Mr. Plumer stated, that this Lady had a *Jaghire* for her jointure, which, after the death of her husband, was continued to her; and upon *this* she lived; and might well live magnificently;—and yet “here” is a gentleman comes into Court, and “upon his oath affirms it to be his opinion” of a transaction, *twenty years before he “came into this country;”* that the person lived so magnificently, he not only knows upon *what*, but *where* even it was *left* for her.

This seemingly well merited reprobation was most vigorously applied by the Counsel; who, having thus cleared away obstruction from *evidence*, began to defeat the force of *eloquence*. He declared on the subject of the Begum’s *title* to the treasure, that he had sought every conceivable proof of legal claim; there was no *deed* of gift, not a *will* could be found of the bequest. The Managers indeed despised such poor, confined, groveling claims; they could bestow one in a moment.—With a fancy that could

—“give to airy nothing
“A local habitation and a name,”

they, by one dash of *genius*, had established a title incontrovertible—that of a *Saint* to a *Relic*.

“The eye, in a frenzy rolling,
“Had glanc’d from earth to heaven,”

and found it in the *clouds*. Sorry indeed was the Counsel that *he* was obliged to grovel upon the earth, immersed in the paltry practice of Westminster-Hall; he was not one of those

“*Quisque Pindarum studet æmulari.*”

Having diverted himself with this sally, and put home a sarcasm upon some who could live, with *no means*, magnificently, he concluded this first head of the subject, before the existence of the express TREATY in 1776; meaning to resume it, and shew, on the next day, when he meant to close, that the right which the Begum enjoyed under our guarantee, was wholly done away by her conduct during the revolt of Cheyt Sing; and as to the idea of *distress* sustained by her, it rested only on the *imagination* of the Managers, since it was a certain fact, that she was left in possession of above one million sterling, even after the seizure in 1781.

ONE HUNDRED AND SEVENTH DAY.

TUESDAY, April 30.

Mr. Plumer proceeding to sum up the

evidence on the Trial, considered the Charge against Mr. Hastings on the resumption of the Jaghires, and said, that he would now discuss the remainder of the Charge in a new point of view. The first was considered as a matter at issue between the Begums and the Nabob; the present was to be viewed as a question between the Begums and the British Nation. As he hoped to have convinced their Lordships, that there was no just cause to complain of any injustice in Mr. Hastings on the former account, he hoped still less would he be found to be blameable in the latter; as the Begums, and not Mr. Hastings, had been guilty of a breach of Treaty.

He then gave a short, but clear history of *Onde*, from the death of Sujah Dowlah, in January 1775, reading, as he went along, a variety of Extracts from Mr. Bristow’s Letters, which stated the extreme distress of the Vizier in the two first years of his reign, and imputing those distresses *solely* to the conduct of the Begum, his mother, who got possession of more than two millions sterling, the public treasures of the State, while the Vizier found in his own Treasury about fifteen hundred pounds sterling, but was encumbered with public debts of his father nearly to the amount of two millions sterling.

Mr. Plumer next read a variety of passages from Mr. Bristow’s Letters, many of them given in evidence by Mr. Sheridan, and *all* proving, that instead of her being a *Saint enforced*, she was a woman of inordinate ambition, and of a most violent temper.—Mr. Bristow, in one of these Letters, says, that she declared she would rather throw all her money and jewels into the sea, than give them to her son.—In another, that if the English would remain *neutral*, let the Nabob take money from her if he could—he would then see the consequences.—In another, that her annual income was seventy thousand, and her annual expences about fifteen thousand pounds a-year.

Mr. Plumer contended, that the only unjustifiable act committed, was, the making a Treaty with such a woman, so disadvantageous to her son, the Vizier; that both Mr. Bristow and the Supreme Council merely justified the Treaty on the ground of *necessity*, as the only measure which could save the Vizier from *utter ruin*, when he was surrounded by a mutinous army, without any possible means of relief but from the treasures of his father, which his mother withheld from him.

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Having clearly shewn that there was not *one* Letter from Mr. Bristow which did not *completely* cut up by the roots every assertion that the Manager (Mr. Sheridan) had ventured to make, Mr. Plumer admitted, that impolitic, and even unjust as Mr. Bristow's Treaty was, it still was binding upon the British Nation. That in that light Mr. Hastings viewed it, and had repeatedly expressed to between the year 1775, when it was made, and the year 1781, when it was broke (not by the British Nation, but by the Begum) in her behalf. The only remaining question then was, Whether his conduct, during the rebellion of Cheyt Sing, did or did not justify our withdrawing the guarantee?

Mr. Plumer, in this part of his summary, laid open a scene of misrepresentation of a most extraordinary nature. He noticed a declaration which the Managers had entered upon the Minutes of their Lordships, viz. that touching the rebellion of the Begums, the whole was a *plot* of Mr. Hastings, and that every testimony originated in his *conspiracy* against them:—He had fancied the Charge, that he might have a pretence to wreak a diabolical malice; he knew their innocence, but he had determined to make them guilty. The Managers said they were going to *prove* this to the entire satisfaction of their Lordships—But how was this serious, this heavy Charge *proved*? Truly by rumour; nay, the rumour of rumour.—Here Mr. Plumer read the names of all the persons, many of them officers of the highest character, who declared that, at the time, nor now, was the least doubt entertained in India of the hostile acts of the Begum. He observed, that the Manager *shifted his ground*, just as the argument of the moment rendered it convenient to him to do so.—At one time the Begum was a *helpless woman*, whom we had condemned for High-Treason without the form of a Trial—at another she was a *Princess*, with whom we *had a Treaty*, and our breach of that Treaty was a crime.

Of all this mass of fallacy, Mr. Plumer said he would stip the charge. The only question then was, Whether, at the most critical moment Great-Britain ever knew in India, Mr. Hastings was or was not grounded, in depriving the Begum of a large treasure which she was employing for our destruction? He quoted ancient writers, he quoted the authority of Great-Britain in the late general war, to justify the conduct of Mr. Hastings.

After a variety of remarks, he concluded, by most happily exposing the gross

inconsistency and injustice of the Managers; for he contended, that in this cause he stood precisely upon an *equality* with them. They were the *Prosecutors*, he the *Defendant*. He observed, that their first evidence was a Mr. Holt.—He, with ingenuousness (the attribute of youth, being only 16 years old, at the time when he was in *Oude*), upon being demanded the *general* state of the country, doubted his capacities of language for so wide a detail; he begged it might be broken into parts. It was done so, and he gave a complete heartay evidence:—He had no reason for belief either of *affirmative* or *negative*; it might and it might not. The deponent had no personal knowledge to assure his mind; and the first 30 pages of the printed evidence were filled by a day and an half of painful query, and assisted remembrance of profound unacquaintance with the subject.

But Rumour, the Managers stated, was admissible evidence, when it was the common fame of the country, and *credible testimony*; and they claimed or assumed a competence to interrogate upon such reports. This witness had said *ten* persons told him a circumstance; upon which the Managers had asked him, whether each of the *ten* persons had communicated the matter as a general rumour, or particular opinion? Then indeed their Lordships had interfered, and said, that to interrogate a witness upon another person's *opinion* of a rumour was a little too hard.

But, said Mr. Plumer, we did not object to this admissibility of *common fame*. We thought only that what was given to *satisfaction* would be allowed to *defence*; but no:—the allegations of charge are maintained by *credible rumours*, and the evidence of vindication is always *loose hearsay report*. The Council then proceeded to remark upon the variety of testimonies, all corroborating the rebellion of the Begums, and enumerated *seventeen* different places wherein the fact was known, at the time when the prosecution declared the offence was a fiction only existing in the breast of Mr. Hastings. He then ran over the names of these Conspirators, and expressed his astonishment, that the rebellion of the Begums should have never, even to the present hour, been doubted in India, and the matter which was only known to Mr. Hastings, which he contrived, and which never did exist, should have so unaccountably been every where credited at the same time.

If every body credited the report, was Mr. Hastings alone to be incredulous?

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Did it not become him to act upon universal report? No, say the Managers, reports are only fit evidence for this highest Court of Judicature. Legal investigation upon oath is for the *burry field*. Deliberation may be *prompt*, and Promptitude *deliberate*.

Their Lordships, perceiving here that Mr. Plumer would be glad of more time to complete his discussion of this Article, adjourned.

ONE HUNDRED AND EIGHTH DAY.

THURSDAY, May 2.

Mr. Plumer resumed his defence of Mr. Hastings upon the second Charge, which he opened with calling the attention of the Lords to TWO extraordinary propositions, each of them containing two heads, placed upon the minutes by the Managers.

The *first* was that touching the *fiction* of the Begums' Rebellion. That they did not only *not* assist the Rebel Cheyt Sing against the authority of the English, but that they actually sent every possible assistance to our aid in the perilous condition in which we then stood; and that Mr. Hastings himself admitted this.

The *second* affirmed, that, the Nabob was the disaffected person; and that the 1000 Najebs sent to the assistance of Chey Sing came from Lucknow, and not from Fyzabad, the immediate residence of the Begums; and this was proveable from Mr. Hastings himself.

Mr. Plumer said, he believed of all the extraordinary positions made in this extraordinary case, the two alluded to were the *most* extraordinary. The Counsel read from a most elegant letter of Mr. Hastings, which in point of force, as well as beauty, has never been excelled, his sentiments upon these subjects. So far from the assertion of the Managers being established by this paper, the direct contrary was finely manifested.

Mr. Hastings expressly exculpates the Nabob, and accuses the Begums. He affirms that the Nabob has acted *nobly* towards him—that he is satisfied he has an honest mind; and that although his Ministers were disaffected to the British, yet he was convinced the Nabob was sincerely a friend to our power. He notwithstanding alludes to doubts once prudently implanted on his mind, but which his late generous conduct had completely eradicated.

The learned Advocate then proceeded to arrange and display all those proofs of the

Begums disaffection^c which have come out in evidence; and he accredited those proofs by the subtle *test* applied by Hume to the establishment of a miracle, viz. "When it was less possible for the evidence to be erroneous, than the matter to be a fallacy." He dwelt upon the number of deponents, and the ubiquity of the common knowledge of the perfidy.

Mr. Plumer here read a number of letters written by Colonel Hannay in September 1781. In these he mentions *positively*, that the Begums took an active part in favour of Cheyt Sing. He mentions being credibly informed, that a body of troops had marched from Fyzabad, to reinforce Cheyt Sing, in September 1781.

Mr. Plumer read next the evidence of Captain Wade, Captain Burrell, Captain Bicy, and Colonel Popham. These gentlemen all swore, that at the action of Patna, *some* of their troops were wounded and taken prisoners.—That they had conversed with them, and had been expressly told by them, that they were entertained by the Begums' orders, who sent them to Cheyt Sing, where they had arrived the day before, having each received two rupees advance for their services before they left Fyzabad.—That what they stated in their evidence was matter of public conversation in camp, and of universal notoriety.—That Mr. Hastings must have heard it, and, as Colonel Popham deposed, had repeatedly talked of the Begums' disaffection in the month of September.—Colonel Blair also swore to the notoriety of the fact. That in India no doubt ever was entertained of the truth of it; nor had he, or any of the other Gentlemen ever heard a doubt of it until they came to England, where *alone* a doubt had existed.

He next adverted to the strong evidence of Captain Williams and Captain Gordon, and to the pointed affidavit of Major Macdonald, who being in India could not be examined at their Lordships Bar; that, contented with these evidences, they had called Gentlemen of great respectability, who had lately returned from India. Colonel Duff, an officer of very high rank, who had not arrived from India above three months, had solemnly sworn that he heard of the hostile acts of the Begums at the time they happened; that he was sure the fact of their disaffection never was doubted in India.

To oppose to the strongest possible evidence

dence that the nature of the case would admit of, *nothing* had been offered—*nothing could be offered* but a bold unfounded assertion of Mr. Sheridan, that Mr. Hastings *invented* this tale *above two months after all the facts were known*, to which so many gentlemen had positively sworn; and his observation, that it would be so *weak, absurd, and foolish*, in the Begums to think of refuting the English, that it could not be credited for a moment.

Mr. Plumer said, it was not his business to prove that all men always acted with prudence and propriety. He had stated *facts* which were indisputable, and proved the fallshood of the charge. But he confessed that one of the Managers had, upon being *hard pressed*, had recourse to an argument of a very singular nature. He said, that the *Commons* were obliged to go into the *enemy's camp* for witnesses, and therefore were entitled to indulgence—a declaration in the highest degree *honourable* to Mr. Hastings, while it shewed to what *distress* his accusers were driven.

The voice of India was undoubtedly on the side of Mr. Hastings. Even the Begums themselves remained silent and quiet spectators of this cause. No one information of *any kind* had been received from the *natives* of India, that tended to support a *single assertion* made by a single Manager. The Tyrant, the Oppressor, the Captain General of Iniquity, as Mr. Hastings had so often been called, was the object of the love and veneration of the people of India. His countrymen joined *as one man*, in repelling the unjust attack that had been made upon him. Except, therefore, the Managers could persuade their Lordships, that more *knowledge* of India was contained in that box, than those possessed who had spent the best part of their lives in India, or except they could show that Gentlemen of the most irreproachable characters had perjured themselves, they had not ground to stand upon.

The leading Manager in this charge (Mr. Sheridan) would not believe a syllable as to the existence of a *plot* here to undermine the Constitution. It was a mere Artificialtical trick; but India was the true center of all plots, and Mr. Hastings the inventor of them.

After exposing the inconsistency and artifice displayed in the prosecution of this Article, Mr. Plumer said there were but two points more to touch upon, but those he was afraid would take up more time than the Lords could give him to-day,

but that he would go through them at the next sitting.

ONE HUNDRED AND NINTH DAY.

MONDAY, May 6.

On this day Mr. Plumer closed the summary of the evidence on the Begum Charge. He began by thanking their Lordships for their patient attention. He said, that what remained to be discussed was rather appendant matter than important as a Charge; yet it concerned the honour of Mr. Hastings that it should be completely refuted.

The first absurdity he would point out, was this: That in one part of the Article, Mr. Hastings was accused of *compelling* the Nabob to seize the treasures and the Jaghires: In another, that the Nabob *bribed* Mr. Hastings to allow him, the Nabob, to do those acts. Another strange and absurd assertion of the Manager (Mr. Sheridan) was, that whatever the *necessity* might have been previous to the 19th of September 1781, no necessity existed subsequent to that period, on which the measure of seizing the treasures could be defended.

Mr. Plumer, in the strongest terms, expressed his astonishment either at the gross ignorance or the *artful misrepresentation* of the Manager. There was not a boy, he said, in India or in England, who pretended to the slightest knowledge of the History of India, who did not know that the distress of the Company's affairs was considerably *increased* after 1781. To put this matter out of all doubt, Mr. Plumer read a variety of Extracts from the Letters from Madras and Bombay, expressing the warmest acknowledgements to Mr. Hastings for the great relief which he had afforded them, stating their *increased* distresses from the continuance of the war, and their *sole reliance* on Mr. Hastings for their future support. Mr. Plumer put this so strong as to convince his hearers, that if the Manager was not *ignorant*, he was *something worse*.

He next exposed the Managers gross ignorance or misrepresentation of the whole history of *Oude*. "But, thank God," said Mr. Plumer, "*the hour of delusion is gone by*." Their Lordships had now before them the whole history of that country, by which it was evident, that from the Nabob's accession in 1775, down to 1781, he experienced the greatest distress, owing to two causes; the one because his mother withheld from him the treasures of the State—the other, as the Marquis Cornwallis

Cornwallis has since said, "to the character of the Prince," whom he describes as careless, inattentive to business, swayed by favourites, and exceedingly expensive.—But such were the consequences of the treaty of *Chunar*, that from *Oude*, a country affirmed by Mr. Francis in Nov. 1781 to be ruined beyond redemption, a country from which Mr. Fox would not receive a balance of 790,000*l.* due to the Company in Nov. 1783; yet Mr. Plumer repeated, such were the consequences of Mr. Hastings's exactions, that between 1781 and 1785, appeared in evidence the sum of 4,200,000*l.* This was one great resource, he said, which carried us successfully through a war, in which Great-Britain could not, as she had done in the late war, afford Mr. Hastings the assistance of a shilling.—After exposing the folly of the accusation in this instance, he proceeded to the bribes, in which he pointed out the contradictions between the evidence and the charge.

Mr. Plumer next proceeded to prove from evidence, that Mr. Sheridan might just as well have charged Mr. Hastings with being the author of the dreadful massacres in Paris on the 1st and 2d of September, as of the distresses of the Khord Mahal in 1782; and then pointed out the gross inconsistency and falsehood of the Charge.

With infinite ability he next exposed the outrageous prejudices of the Managers. He said, that one of them, Mr. Adam, had applied a grosser expression to Mr. Hastings than ever was used in a Court of Justice, even with *proof of the fact before it*. He had said, that Mr. Hastings had put a *false date* to a letter, and, consequently, to use Mr. Adam's polite expression, had written *a lie*. Their Lordships might recollect the confession, which ensued from Mr. Hastings's being unable to sit silent under such an accusation. It now appeared that Mr. Hastings was perfectly correct; that the letter was sent when dated, but that he, John Macpherson, withheld it from the Records. All these circumstances the Managers might have known, if their anxiety to discover *truth* had equalled their eagerness to condemn.

He next proved that the Directors had sent no orders for an enquiry into the fact of the Begums' rebellion; and it being now five o'clock, and a great number of Members of the House of Commons, with Mr. Dundas, coming down, he took the opportunity of placing the inconsistency, absurdity, and injustice of the Impeachment,

in terms so strong, that he excited the attention of all his auditors. He said, that Great-Britain was a nation famed for her regard to Justice throughout the world—but the Nation and Mr. Hastings were both upon their trial, and that both must rise or fall together. Their Lordships had in *proof* before them what India thought of this long prosecution. *Twenty years* had elapsed since Cheyt Sing was expelled from Benares, and since the Begums were deprived of a part of Sujah Dowlah's treasures. The nation had *enjoyed* the benefits of both—It had taken the money, and *exposed* them by Impeachment.—There was no end of the absurdity and injustice of Great-Britain, provided the Articles against Mr. Hastings were *founded in truth*. But thank God, the honour of the country was in no danger; a *six years trial* had no other effect than this, to shew to the whole world the gross ignorance of those who first set the prosecution on foot—to call forth the testimony of all India in favour of the accused, and to induce the prosecutors reluctantly to confess, that in all their ideas as to India, they had been mistaken. Mr. Plumer put this in every possible point of view, and left this impression *strong* in the minds of those who were prejudiced against Mr. Hastings (if any such there be), that the nation participated in any *injustice* which might attach upon him: but he again and again repeated, that he was confident the judgment of their Lordships would vindicate the honour of the nation, and of Mr. Hastings, both embarked in a common cause.

ONE HUNDRED AND TENTH DAY.

THURSDAY, May 9.

The Court did not assemble on this day until a quarter before three o'clock.

Mr. Dallas immediately rose, and arrested the attention of the Court for two hours and a half, by one of the first speeches ever uttered in a public assembly—never once deviating from the subject before him, nor venturing to make one single assertion which he did not prove, either by evidence already adduced by the Managers, or by documents which he read, and proposed to enter hereafter.

He reminded their Lordships, that he was now about to answer a Charge, or Charges, which had employed *two whole years* in the prosecution, and upon which the Managers had spoken *seven days* in the opening and the close. The Charge was a corrupt receipt of money—and in return for such receipt, the forming such arrangements

ments for the collection of the Revenues as brought *oppression, ruin, and destruction* on the natives of Bengal. To every part of this Charge, Mr. Dallas said he would give that full and complete answer which should satisfy the mind of every free and candid man. After placing the previous matter in the clearest point of view, he proceeded to examine the several allegations in the Article; and he entreated their Lordships to go along with him in considering the immense extent of the Charge made by the *Commons of Great Britain*, and the poverty of the proof by which the Charge was supported. No man would say that *time enough* had not been given to procure evidence of the guilt of Mr. Hastings, if he had been guilty. *man* would say, that *talents and perseverance* were wanting; for he was as ready as any man to do justice to the *abilities*, and to the *industry* of those who were opposed to him, as any Gentleman could possibly be: yet, though armed as they were with all the *power* and authority of the country, he was ready to meet them boldly in front, and to shew, that from the first allegation to the last, their Charge was utterly unfounded.

Mr. Dallas then stated, that they set out by asserting as a *fact*, what a very little *attention* to the Company's Records would have proved to be totally unfounded; namely, that Mr. Hastings had succeeded to the Government of Bengal in 1772, determined to act corruptly, and therefore he had neglected to take that *oath* which all his predecessors had taken. The falsehood of this allegation Mr. Dallas exposed in the most clear and convincing manner; not by oratory, but by a reference to original documents.

The next point in Mr. Dallas's speech, was the *discovery and detection* of a vast mass of misrepresentation. Here he could not be mistaken, for he read faithful extracts from Mr. Burke's speeches, and compared them with the evidence that Mr. Burke produced.

From the speech it appeared, that Mr. Burke represented Mr. Hastings not only as the most *corrupt*, but as the most cruel and unprincipled of human beings. The date of all this corruption was supposed to be in the year 1772. As there was nothing like *evidence* to justify such wild expressions, Mr. Dallas said, it would be right to consider what Mr. Hastings had been up to that period. In the most chaste and modest language he proceeded to state, that in 1749 Mr. Hastings went a Writer to Bengal; that, after filling the highest situa-

tions there; that of Governor excepted, after having been concerned in all the important events which happened between 1749 and 1765, he returned in that year to England; that in 1769, he was appointed second in Council at Madras, and was removed, and succeeded to the Government of Bengal in April 1772. That much clamour had been raised in England on account of the fortunes acquired in Bengal, and the various changes that had taken place between 1756 and 1765.—That accounts had been published of the several sums gained by individuals in that period, but that amongst their names that of Mr. Hastings was *not to be found*.—That this circumstance, and the high opinion entertained of his abilities by Lord North, induced him to propose, in 1773, that Mr. Hastings should be appointed Governor-General of Bengal for five years, by the Legislature of Great Britain.

These circumstances, Mr. Dallas said, he did not mention as a *set-off* against any *proved fact*; but the Managers had proved *no facts*: it was therefore fair to oppose to the monstrous absurdities which they had ventured to utter, what was the established character of Mr. Hastings up to 1772; and he would put it to any candid or honourable man to determine, whether; upon such *slimy reasonings* as the Managers had offered, their Lordships would be induced to think, *that in one moment* Mr. Hastings should assume a character *totally new*, for to such *an absurd extent* did the charge go.

Mr. Dallas then proceeded to state the unexampled cruelty with which Mr. Hastings had been treated. He examined and refuted, *point by point*, the allegations in the Charge, as far as he went. He quoted several parts of Mr. Burke's speech, and sifted the evidence in support of it. He accused him of a most unwarrantable misstatement of facts—of taking the beginning and the close of the sentence of letters, with a view of totally perverting the sense—of making assertions, that, so far from having a shadow of foundation *in fact*, were contradicted by his own evidence—and he repeatedly *pledged his character*, well aware as he said he was of the sacredness of the pledge, for the truth of all he had advanced.

The circumstance pressed very much by Mr. Burke in his opening, and dwelt upon by Mr. Fox in summing up, was this—That when Mr. Hastings succeeded to the Government of Bengal, he neglected to take an oath established by Lord Clive in September 1766, as an oath to be taken by all

all succeeding Governors; that Lord Clive himself had taken this oath in the mode prescribed, namely, in the Town-hall of Calcutta, before the Mayor and Aldermen; and had before them also enacted the Penalty Bond, by which he bound himself not to receive for his own use and benefit any presents, and in return he took *one and one-eighth per cent.* in the revenues of Bengal, in addition to his salary and allowances, and this was to be the perquisite of future Governors. Here the Managers most unaccountably slipped their evidence *as to this oath*, and as *unaccountably* gave evidence of *another oath*, as it were this oath of Lord Clive's, though that other oath was totally distinct. But Mr. Dallas said, that he should supply the Managers' omissions, because in every instance he wished their Lordships to have the subject *complete* before them. In January 1767 Mr. Verelst succeeded Lord Clive, and immediately took the oath of office, namely, that of *fealty, allegiance, and fidelity*—this the Managers had given in evidence, thereby *imposing* a belief on their Lordships, that this was the oath presented by Lord Clive; but had the Managers been desirous of discovering and stating the truth, they would have known that three weeks subsequent to the time of taking the oath of office, Mr. Verelst went *publicly* to the Town hall, and there, before the Mayor, Aldermen, and Inhabitants, took the oath, and *executed the Bond*, in the same public manner as Lord Clive had done.

In December 1769 Mr. Cartier succeeded Mr. Verelst. The Managers had entered evidence to prove, that he also took the presidency oath; that is, the oath of *Faith, allegiance, and fidelity*, at the Council Board; but the fact was, that he never did take that oath, nor execute that Penalty Bond prescribed by Lord Clive; nor was it at all necessary that he should.

In February 1772 Mr. Hastings arrived in Bengal. The Managers had *entered as evidence*, that he took his seat at the Council Board after the customary oaths had been administered to him.

Having thus detected and exposed the fallacy practised by the Managers as to this oath, Mr. Dallas said he would next prove, from their own evidence, that Mr. Hastings had taken an oath and executed a deed the same in *substance* as that prescribed by Lord Clive. Before he left England in 1769 he bound himself by Covenants not to accept presents for his own use beyond a certain amount, and before he took his seat in Bengal the customary oaths were administered to him,

namely, of *allegiance and fidelity*; there was, therefore, not a shadow of ground for the charge urged by Mr. Burke, and supported by Mr. Fox. Mr. Cartier, his predecessor, had not taken the oath prescribed by Lord Clive, and from whom but his predecessor or the Public Secretary was Mr. Hastings to know what oaths he was to take in succeeding to office? The successors of Mr. Hastings, Sir John Macpherson and the Marquis Cornwallis, had not taken the oath—a plain proof that it was not deemed necessary. He again repeated, that the contumacious oath of office with the oath prescribed by Lord Clive, for the express purpose of asserting, that the moment Mr. Hastings took the chair of Bengal, he was determined to act corruptly, was one of the most flagrant misrepresentations that ever had occurred in the prosecution of a criminal cause.

Mr. Dallas dilated at some length on a very curious part of Mr. Burke's speech. Mr. Burke had related as an *historical fact*, that when Mr. Hastings received orders from the Directors in 1772, to arrest the person of Mahomed Reza Cawn, and to bring him a prisoner to Calcutta, he had done it with a promptitude and in a manner that shewed his cruelty; that this wise and upright Magistrate was seized when sitting in his garden, dragged to Calcutta, and kept *two years* under a trial.

From the evidence given by Mr. Burke himself, he could fully refute so foul a misrepresentation. By that evidence it appeared, that the Directors, conceiving Mahomed Reza Cawn to have embezzled millions of their property, and to have been a principal cause of the famine, had sent orders to Mr. Hastings, and to him only, to arrest Mahomed Reza Cawn, and to bring him to a trial, pointing out Nundomar as the fittest person to detect his malpractices.

It appeared in evidence, that Mr. Hastings sent his orders to Mr. Samuel Middleton for the performance of this service, desiring him at the same time to execute it with as much tenderness and delicacy as he could, consistent with the nature of the service.

It appeared in evidence also, that Mr. Hastings himself wrote a letter to Mahomed Reza Cawn, expressing his concern at having received such orders, but the necessity there existed for his obedience. It appeared in evidence also, that Mr. Hastings was not in any degree blameable for the length of the enquiry; on the contrary, that he had himself represented it to the Directors as a *very heavy grievance*, the fault lying solely with Nundomar, who,

who, for ten months successively, had promised evidence that should establish the facts alleged against Mahomed Reza Cawn—That in the end, Mr. Hastings had given his opinion to the Directors, that Mahomed Reza Cawn ought to be acquitted—which he accordingly was.

Had Mahomed Reza Cawn lived to this day, how different would he have seen his own fate, and that of his Judge, Mr. Hastings. The latter had been two years in a state of accusation, and six years on a trial before their Lordships. In that *long period* the defendant had heard nothing but the most cruel and insulting language; no sentiment of regret at the unparalleled length of the trial, or of concern that *public duty* compelled his prosecutors to support such a mass of accusation.

He then adverted to the strange and ridiculous language held by Mr. Burke relative to Munny Begum, whom the Manager had described as a woman of low birth, and a *common Prostitute*. Contemptible as the evidence was, it is the only evidence on which such an assertion was made. Mr. Dallas said he would allow, if Mr. Burke pleased, that Munny Begum was the daughter of a low woman, had been sold for a slave, and was a dancing-girl. The English never knew her in any of those characters. It was more than thirty years ago that she was the wife of Mir Jaffer, left by him in charge of his family, when he died in 1763; her son appointed by Mir Jaffer the Nabob of Bengal; and her attention the evidence by which Lord Clive (who describes her as Jaffer's widow) accepted a legacy of five lacks of rupees, which forms the military fund of the Company. By Mr. Verelst, Mr. Cartier, and Mr. Hastings, by Sir John Macpherson and the Marquis Cornwallis, this Lady has been treated with every respect that it was possible for them to shew her, and even Mahomed Reza Cawn describes her, after the death of her son, the Nabob, as equal in rank to the mother of the present Nabob.

Mr. Dallas next took to pieces the charge of improperly appointing Munny Begum to be the guardian of the Nabob's minority. He here exposed a most unwarrantable fallacy practised by the Managers. It was the sense and spirit of the Directors' orders, in 1771, that the English, in other words Mr. Hastings, should take the Government. In debating on this subject, Mr. Hastings describes what the power of a Naib Subah was, thinks it too great, and therefore concludes, that the very name as

well as the person of the office *should be abolished*. The Managers read Mr. Hastings's description of the powers of a Naib Subah, *suppress* the determination for these abolitions, and then enter the resolution for Munny Begum's appointment, in order to shew to *what an important post* that woman had been raised. Perhaps a more audacious attempt to mislead a Court of Justice never was practised. This was not accident—it was design. The mutilation was obvious to every one.

Mr. Dallas next proved, that the sum received by Mr. Hastings, could not, under any possible construction, be called, as the Charge stated it to be, a bribe for appointing Munny Begum the Nabob's guardian; and yet if it was not that, it could not be criminal. He illustrated this by a fine personal appeal to Mr. Fox. He said, the custom of giving a specific sum of money for entertainment to men of rank when at the Court of a Prince, was established from time immemorial in India. The predecessors of Mr. Hastings had received it when they were at *Moorshedabad*, and as often as the Nabob of Bengal came to Calcutta he received one thousand rupees a-day there from the Company, for entertainment, as the term *zeusert* was translated. If the custom was improper, it might be abolished; but how a compliance with it in 1772 could be construed a *high crime*, he was at a loss to conceive.—Then Lordships, at the distance of *twenty-one years* from the date of the transaction, were now to determine that point. It appeared, Mr. Dallas said, from the Reports of the Commissioners of Public Accounts, that balances to an enormous amount had remained six years in the hands of Paymasters, or the executors of deceased Paymasters. It might be a question, whether the interest accruing from those balances, and amounting to many hundred thousand pounds, should not belong to the public, as they would to individuals in the case of a private trust; but no man would think of impeaching a Paymaster of a high crime for following a long established practice. Mr. Dallas next proved the fitness of Munny Begum for the office to which the Council had unanimously appointed her, and expressed a wish, that the Managers had had the *cautour* to enter *the thanks and approbation* transmitted to Mr. Hastings, both for that appointment, and the arrangements that he had formed in 1772.—All her requested of their Lordships was, to look to each subject *complete*, and to reject the

the garbled and mutilated accounts which tended only to mislead or to confound.

ONE HUNDRED AND ELEVENTH DAY. THURSDAY, May 16.

Mr. Dallas resumed his refutation of the Third Charge. — The learned Counsel treated the various matter adduced with great logical acuteness and methodical exactness, pressing the strong points of his argument with much force and dexterity.

He examined the allegation of Mr. Crofts's appointment—He shewed, that so far from its originating in Mr. Hastings, with a view to corrupt Agency, the nomination of that Gentleman was elsewhere, the Defendant merely assenting to the appointments; and that, instead of the alleged incapacity of that Gentleman, the strongest testimonies of his abilities might be collected from those in habits of opposition to Mr. Hastings—They all spoke of him as a man of character and talents.

The next head of allusion was to Nundocomar, whom it was affirmed Mr. Hastings had begun to vilify only when his testimony was likely to be brought against him. The learned Advocate read the character given by the eloquent Manager of this person—"He was a man eminent for talents above those of the country—high in his cast—of irreproachable morals in youth, and of a character that in Benares never appeared without exciting awe and exacting respect—To these circumstances he added another, which without them might claim for him veneration—he had reached beyond seventy years of age."

Mr. Dallas observed, that it was an unquestionable position, that "Age demanded respect when it was the seniority of Virtue. — When arrived at the calm contentment of the close of life, Old Age was benevolent and consoling; when, like a replenished gulf about to leave the table of plenty in peace, he beneficently wished to those who were to follow delight even greater than his had been, and compose superior to his own.—But such had not been the Old Age of Nundocomar.—In his breast the furious passions of youth were yet fermenting, like some poisonous ingredients prepared by Malice, and in a Cauldron brewing woe and unrest—He was emphatically described, anterior to the time when Mr. Hastings repelled him as fit evidence, as "a man of violent passions and a turbulent habit; one perpetually labouring the

ruin of any Society so unhappy as to hold him."

After clearing up this point by evidence sufficiently satisfactory, he came generally to consider the hardship of Mr. Hastings's situation, putting it hypothetically that the Presents had been taken by him in the way stated.—Fifteen years had elapsed since these transactions, and three successive re-appointments of him to the high situation he held; it was not until the present time such Charges were preferred; and there was not a single Article occurring since in evidence; all was known or could have been at the very time, and the approbation of the Legislature might be relied upon without an attempt at other vindication. However, the cause of the Defendant needed no such stoppel, and Mr. Dallas pledged himself to prove that every charge of corruption was fallacious and irrational.

He then, without any practicability of annoyance from the Enemy, took a very strong position upon the heights of an Act of Parliament—the Restraining Act of the 13th of Geo. III. —and after viewing first the sense given by the Managers to this Act, referred finally to the Act itself. The Charge states the meaning of this to be, "That no Servant of the Company is to receive Presents upon any ground or pretence whatever." Now the fallacy of this statement is apparent, since it includes all possible cases, and the man receiving against such an Act must be guilty: but the Act itself contains certain *three words*, which place it in a very different point of view—they are, "*for his benefit*"; and there is no passage in the Act which refers the crime to such receipts for the benefit of the Company. Upon this ground the Counsel challenged a contest from the opposite side; he was well assured that the Act of Parliament would bear him out, and that no such inference could be drawn, as the prohibition of Presents *taken for the Company*.

Mr. Dallas shewed the antiquity of the Present, as a customary gift for the table of an Agent of the Company residing at any of the Indian Courts. However, the subsequent Act of the 24th of Geo. III. had removed all doubt; and the Legislature thereby formally determined, that Presents taken for individual benefit, or the use of the Company, should be alike matter of crime. He proved, that this last Act was not declaratory, but enacting; it did not explain what had in the former been obscure and unintelligible; it enacted a new Clause, by which the reference:

was extended to a practice never impugned before.

"But however," said the Counsel, "we are now advancing from the Star-light of Circumstance to the Day-light of Discovery — The Sun of Certainty is melting the darkness, and we are arrived at facts admitted by both parties."

The first Present that he received from Sutanund, the Buxey of Chyrt Sing, was admitted to have been taken, and the points at issue were, whether or not it had been appropriated to the Company's use, and whether it was taken with a corrupt view.—Mr. Dallas stated the situation of India and Mr. Hastings at the time.—It was when the Quadruple Alliance threatened our complete dispossession; when Colonel Monion and General Claresing were dead, and Mr. Hastings found himself thwarted in every measure he projected. It was the object upon which he pledged his existence, that if he could detach Madajee Scindia from the Confederacy, he would answer for our safety.—Mr. Francis and Mr. Wheeler condemned him to fight a battle they disapproved, with his hands tied. They would emit no money

from the Treasury, it would be needed at a future opportunity. They preferred its inactivity in a coffer, to the employment of emergency. "O, but Mr. Hastings, after entering this sum to the Company's Credit, had called it his own." True it was he had done so, and the reason was obvious, for if he had styled it then a sum belonging to the Company, the said Messrs. Francis and Wheeler would have forbidden its employment in the way productive of purposes so sure and beneficial.

Mr. Dallas then arrived at the measure known by the name of the *Three Bonds*.—He pledged himself to prove these Charges as futile as the *first*. Mr. Burke, rather angrily, asked for a specification of what that was. The Court knowing exactly what it was, adjourned at Five o'Clock *.

ONE HUNDRED AND TWELFTH DAY.

FRIDAY, May 17.

Mr. Dallas proceeded in his defence, and desired their Lordships would have the goodness always to bear in mind, that upon this case of the *avowed Presents*, as the Managers termed them, there was no evidence of any kind except what Mr. Hastings had himself furnished; and that

* On their Lordships' return from the Trial, the following Petition was presented from Mr. Hastings to their Lordships by Lord Walsingham:

"That your petitioner once more makes his appeal, in the hope that it will be his last, to the justice of your Lordships; that he forbears to state the too well-known hardships of his case, or the grounds on which he most solemnly asserts his belief, that unless your Lordships, feeling as he feels the enormity of the delays which have attended his long-protracted Trial, shall resolve it to be brought to a conclusion during this Session of Parliament, it will not, in the ordinary and permitted course, be ended, until the judgment of another year shall have added to the chances of its being concluded by other causes than the legal verdict of your Lordships. which, your Lordships have been told by one of the Managers of the prosecution, must inevitably fall with infamy either on the head of your petitioner, or on those who have consumed so many years of your Lordships' attendance in labouring to prove their allegations against him. That, although it may not be possible for your petitioner to know the time which may be destined to the duration of the present Session of Parliament, yet he cannot be inconsiderable to the reports which he has heard of the short term which is assigned to it; and even its uncertainty is to him a source of continual alarm. That, as an humble individual, impressed with the firmest conviction of your Lordships' justice and humanity, he implores your Lordships to grant him that grace, which as a British subject he might demand as his undoubted birth-right, the benefit of undemied and undelayed justice; and that your Lordships will not leave him a single exception to the rest of his fellow-subjects of this kingdom, whose hearts attest the wisdom of its Constitution, and who boast of the blessings which they enjoy under it; blessings in which he cannot be said to participate, who, having been the subject of a criminal prosecution during six years, is yet doomed to linger out his life in the same unmerited state of depression, suspense, and (but for the breath of public opinion, and the hopes of life sustaining him) of universal and perpetual ignominy.

"Your petitioner, therefore, most humbly and fervently prays your Lordships, on whose justice and honour he places his firmest reliance, to adopt such means as to your Lordships' wisdom may seem best calculated to accomplish the end which your petitioner so anxiously solicits, namely, a close of this long depending Trial during the present Session of Parliament.

(Signed)

"WARREN HASTINGS."

A debate took place, on which binding themselves to the prayer of the petition was rejected; and then, upon motion, it was resolved to proceed farther on the Trial the next day.

no doubt did exist, but that every Rupee received by Mr. Hastings as a Present, was expended in the public service.

Having already shewn that the two lacks of Rupees received from Cheyt Sing's Buxey were publicly applied, he would now take up the sums for which Bonds had been granted to Mr. Hastings in the years 1780 and 1781. He proved, most satisfactorily, from a reference to dates and circumstances, that Mr. Hastings never could have had the most distant idea of applying any part of this money to his own use.

He next took up the Present of One Hundred Thousand Pounds sterling from the Nabob of Oude and his Ministers, and proved, that every Rupee of this Present also was applied to the public service, at a time when our very existence depended on the realization of every Rupee that could be procured.

He shewed that the receipt of one had detached Madajee Scindia from the Mahratta War; he proved that another had opened to our Troops the Territories of Boosla; and that by these measures India had been saved to the Company. He considered tally the sums upon which certain Lands were let to Kyalieram and Cullian Sing; and satisfactorily proved the propriety and usage of the *Perbush*, or Fine levied from persons to whom lands were let for the first time, being proportionate to the value or produce of such lands. So far from their having been let disadvantageously for the Company's interest, the learned Counsel proved the preference of these terms to those tendered by the Committee; and evinced the prudence as well as purity of Mr. Hastings's conduct.

Mr. Dallas then considered Mr. Hastings's Letter delivered to the Board here by Major Scott, and examined the unaccountable question put by the Managers to the Major—"Whether the delivery of it was not to depend upon the complexion of things here?" He said, to such a question (he should call it ungenerous and ungentlemanly!) the answer given by the Witnesses himself was sufficient—"it was *not* to depend upon circumstances." However, he should shew their Lordships the impossibility of the thing, by a Letter so closely following the former in date, as May does January; which, when it was written, handed a duplicate of the former, and must of course have gone to the Directors, without a practicability of knowing whether Major Scott had given the original, or what the circumstances might be upon

which its delivery was assumed to depend.

The Counsel then considered the accounts furnished by Mr. Larkins, and the idea of collusion attempted to be thrown against the facts they establish, we mean as to the veracity of *disbursements*, for of the *receipts* therein stated there was no question. Mr. Dallas then remarked upon the candid declaration of Mr. Hastings—"I have thus faithfully laid the proceedings before the Court, and beg the Directors to be satisfied of the facts stated; for if I had ever meant to appropriate these Presents for my own benefit, I could have taken care that any knowledge of them should never have reached you."—Is it not hard, said he, that the only weapons, those furnished by Mr. Hastings, should be used against him?

(Mr. Fox *whispered*, "To be sure this is always done; there is no other way.")

The Counsel examined the dates when these sums were paid into the hands of Mr. Larkins, and thence inferred, that the rumours of the country communicated to Mr. Hastings by Mr. Anderson, could not have induced him to make this entry to the Company's credit.

ONE HUNDRED AND THIRTEENTH DAY.

FRIDAY, May 24.

Mr. Dallas closed his opening of the Presents and the Revenue Articles, and went through the remaining articles of the Charge with infinite force and clearness. The remaining points, he said, were, a Present received from Rajah Nobkissen, and applied to the payment of certain public expences incurred by Mr. Hastings; and a Present of One Hundred Thousand Pounds offered by the Nabob of Oude, but not accepted. He stated, in the most clear manner, the circumstances of the first transaction, and proved, that the expences incurred and charged to the Company were equally charged by Lord Cornwallis as they had been by the predecessors of Mr. Hastings. He examined the allegations of the Commons as to the corrupt application of the Public Money, and proved the communication to the Board, or the participation of the Supreme Council in the measures thus charged with sinister views.

He then came to consider the Bribe or Present offered by the Nabob to Mr. Hastings, which the Governor-General personally refused—his instructions to Major Palmer upon that subject, *viz.* To get it for the Company, if possible, and to assure the Nabob, that if he would transfer

there

there his intended gift, Mr. Hastings would consider it equally kind, feeling the interests of the Company as sensibly as his own.

But the case was perceptibly changed, and the instant Mr. Hastings's rejection was made known, the Nabob's liberality died away—Of what was the Governor-General therefore guilty? Of preferring the Company's advantage to his own—of refusing himself to take what was not to be applied to the exigence of the Company. A fine inference flowed from this instance upon the other Presents received by Mr. Hastings, and silently appropriated to the uses of Government.

What remained of greatest importance was to consider the various positions of the Change stating the creation of new functions and the abolition of old from personal and corrupt motives—Now these, Mr. Dallas said, resolved themselves chiefly under these heads :

1. The appointment of Aumels.
2. The abolition of Provincial Councils.
3. The creation of Revenue Committees.

With respect to Aumels, whose appointment, by the bye, were not to be his, they were said to be invested with powers wide, oppressive, and unaccountable; to spy into the nature of property, and to exact rents with rigour, without coercion and imprisonment upon contumacy.—What they were, could appear from their *Injunctions*; in these only was to be found the guilt of the appointment; and yet, although Managers were in possession of those very documents, they had never to the present hour been entered upon their Lordships' Minutes. The learned Council said, he meant to adduce them in evidence.

As to the abolition of Provincial Councils, which was charged as a Crime in Mr. Hastings, because in 1776 he had approved as a law, or institution, what in 1781 he had abolished—Mr. Dallas produced the opinion of Mr. Francis, that they were fundamentally wrong, combining the design and the execution, two powers of dissimilar properties going the same pace—and yet Mr. Hastings was charged with relying upon the absence of this very Gentleman to carry a measure into effect, which must have had his approbation.

With regard to the Revenue Committees, four Gentlemen *accountable* to the Board, which they were bound to consult in every case of importance, and to whom their conduct was to be detailed the 15th of every month, Mr. Dallas very ably

employed the words "accountable to the Board," so unaccountably omitted by the Managers;—for by the statement of the Charge it appeared, that these were mere tools by which Mr. Hastings usurped to himself all the authority of the Board, and yet by the very nature of the office they were accountable to the Gentlemen so joined with him in authority.

Upon all these subjects the Counsel dwelt with peculiar force, upon the testimony of Mr. Anderson, and most particularly of Sir John Shore. The office of Dewan was admitted to be necessary, and notwithstanding the character which had been given to Gunga Govand Sing, what could be gathered from other evidence was in great measure directly the reverse.

None but the Natives were fit for this occupation, and yet they knew none they could trust. One of the Gentlemen said he disliked Gunga Govand Sing; and yet, after six years experience in the collection of Revenues, he declared he was not prepared to say whom he could have preferred.—The admission of the necessity for a Dewan, that Dewan a Native, the knowing no one fitter for the business than this man, Mr. Hastings was assuredly not culpable for this nomination.

But perhaps, said Mr. Dallas, the Right Honorable Manager may endeavour to get rid of this evidence, and tell your Lordships, that not a particle of the testimony given by the present Governor-General of Bengal is to be relied upon; that he is a partner in the guilt of Mr. Hastings—a member of the great Conspiracy formed by the Defendant: "Yet that cannot be said, or it must not be admitted; for, if it be, Sir John Shore, the accomplice of his guilt, will be recalled from the splendor and dignity which surround him, and share in the honour of Public Impeachment—Nay, these bars must be broken down, a wider field must be provided for fresh culprits;—the Court of Directors must appear charged with Confederacy, by the appointment of Sir John Shore, the accomplice of Mr. Hastings:—Nay, yet more will be dragged before this Tribunal, higher and more distinguished, His Majesty's Ministers who recommended that nomination.

"If Sir John Shore, however, has said, that he knew well, from the commencement to the period of Mr. Hastings's Administration, his virtues and his abilities; if he pronounced the Natives happier under his Government than those of their Native Princes; if he affirmed the perfection of Police, the increase of Revenue, the affluence

affluence of Prosperity, your Lordships will rely upon such testimony, preferring the opinion of one locally conversant with India subjects, to that of the framers of these Charges, divested of such information. In that confidence, I trust that your Lordships will acquit Mr. Hastings upon the Charges exhibited against him."

As soon as Mr. Dallas sat down, Mr. Hastings rose, and addressed their Lordships from a written Paper to the following effect:—

"My Lords,

"I venture to solicit the attention of your Lordships to the situation in which this Trial at present stands.

"I hope for your Lordships' indulgence in requesting to be allowed such further time in the course of each day's sitting as may enable me to bring the remainder of my defence, if no interruptions intervene, within the probable period of *three days more*.

"I hope by the means of such indulgence to conclude my evidence on the Article now under consideration within the compass of *one day*.

"I am intimated, that the observations of my Counsel upon it will only occupy another, and the Gentleman upon my right hand (Mr. Law) is willing to waive any observations, that the defence may be the sooner closed; in that case, *one day* will be sufficient for this Article. The abridged Evidence with which I mean to trouble your Lordships on the only remaining Article, *that of Contracts*, may be comprised within the space of *one day more*. I am willing to forego the benefit of a more detailed defence, in order to enable the Managers for the Commons fully to conclude their reply within the course of the present Session; an expectation which, I trust, I do not unreasonably entertain, in this advanced period of a Trial that has been so many years depending.

"I am well aware of the disadvantage to which I subject my defence on this Article, by leaving the evidence *unstated* and *unapplied*, to make out its own effect; and it is with reluctance that I deprive myself of the benefit of those talents which have been so ably displayed on the former parts of my defence; for it is to those talents, aided by the zeal and cordial affection which have animated them to their best exertions, that I am now indebted for the hope and assurance which I confidently entertain, that though I should not live to receive the sanction of your Lordships' acquittal, my name at least shall not descend blighted with infamy to posterity, but be

recorded with those of the many other victims of false opinion, some of higher worth, none of better intentions, who have done service to the States which employed them, and been requited with unthankfulness and persecution.

"My Lords, I consider the resolution which I have taken as a sacrifice, and I make it with the greater cheerfulness, as it may, and must in some degree, prove no less an accommodation to your Lordships' time than the means (if your Lordships shall so permit it) of obtaining my own deliverance from a state of suspense which is become *almost insupportable*."

Mr. Burke appeared to feel what he called an attack on the justice of the Commons of Great-Britain; and said, that Mr. Hastings was not excused for time, and it was his business to make his Defence complete, or at least that he ought not to plead want of time as any excuse for omitting any thing material—an argument which seemed to be heard without carrying conviction to the breast of any one of Mr. Burke's numerous auditors.

Mr. Burke continued:

"When the Managers shall have made their further remarks upon what has been adduced in support of the Defendant, it will be for your Lordships to consider the propriety of the terms which any culprit at your bar may apply to the Commons of Great-Britain, of ingratitude for services rendered to his Country.

"With respect to the defence made by the Gentleman at your bar, he has had all the support that the learning of the bar, the affection of a Host of Friends, or his great fortune, could procure—If, from whatever cause, he may wish to narrow the bounds of his vindication, it is for him to do so, and for your Lordships to consider, whether in so doing, supposing he should be found *GUILTY*, it is not meant to be insinuated that, but from voluntary design, he might have avoided himself of testimony which would have cleared his character."

He repeated this remark, that with respect to the abridgment of evidence or the curtailment of reasoning upon it, the consequences must rest with himself, the Commons disclaiming any wish to narrow the defence which he should set up, and pursuing their object without any other advertence to the present declaration.

Mr. Fox, of similar sentiment, said his colleague and Right Hon. Friend was perfectly right—and at half past five o'clock the Court broke up.

ONE HUNDRED AND FOURTEENTH
DAY.

SATURDAY, May 25.

The first part of the morning was taken up in reading short a variety of papers, stated by the Counsel as necessary to complete evidence which the Managers had mutilated and garbled.

Mr. Anriol was then called, and examined as to the oaths taken by Mr. Hastings, when he succeeded to the Government of Bengal in 1772. He said he was pretty certain that he had seen Mr. Hastings's name subscribed to these oaths, in a book kept by himself as secretary, and left in his office to his successor just as he received it from his predecessor.

As to the restrictive oath proposed by Lord Clive in 1784, taken by himself, and by his successor, Mr. Verelst, in the Town-hall of Calcutta, before all the inhabitants, that was a totally different oath, and had become *obsolete* before Mr. Anriol's arrival, and had not been taken by Mr. Cartier, the predecessor of Mr. Hastings. This was also proved by Mr. Hudson, fully fixing upon the Managers and their Counsel the charge of negligence and misrepresentation.

Mr. Burke cross-examined Mr. Anriol for nearly two hours complete, asking him an infinite variety of questions, apparently of little consequence, but to which he received the clearest answers. To one involved and complicated question, Mr. Anriol replied, by desiring it might be divided, and then he would answer it, which he did; upon which Mr. Burke made some reflections so very offensive, that the Archbishop of York, started up with much feeling, and said it was impossible for him silently to listen to the illiberal conduct of the Manager; that he examined the witness as if he were examining, not a Gentleman, but a pick-pocket; that the *illiberality* and the *inhumanity* of the Managers, in the course of this long Trial, could not be *exceeded* by Marat and Robespierre, had the conduct of the Trial been committed to them.

Mr. Burke seemed much confounded, but said, in reply, *that he had not heard one word of what had been spoken*, and that he should act as if he had not. He then pursued his examination; and, in the course of it, Lord Staunhope, Lord Mordaunt, and Lord Somers, expressed their belief that the Trial never could come to a close, if a Gentleman was to be examined so long

upon the *rumour of rumours*.—Mr. Burke then began to talk about the Begums, but was called to order; and about half past four, the Counsel closed their evidence on the 6th, 7th, and 14th Articles—taking *five days only*, for what had occupied the Managers *thirty-four* on the prosecution.

Mr. Plumer then observed, that, agreeably to Mr. Hastings's engagement of yesterday, they should not sum up, nor expend any time in opening the only remaining Charge, the Contracts, but proceed *directly* to the evidence. The first was the Opium Contract; and here he should supply what, in *condour and justice*, the Managers *ought not* to have left deficient. He said, the evidence he should produce would prove:

1. That, until the Government of Mr. Hastings, Opium was no branch of revenue to the Company, but a monopoly in the hands of individuals.

2. That Mr. Hastings took it from those individuals, and made it a productive article of Revenue for the Company.

3. That in 1775 it was put up to public contract, and the contract given to the lowest of sixteen bidders, that is, to the man who offered the best terms for the Company.

4. That in 1777 it was given to Mr. Mackenzie for three years, on the same terms that the lowest bidder had it in 1775.

5 (Which the Managers had *totally sink*) That in the year 1780 it was granted to Mr. Mackenzie for *one year longer*, by Mr. Francis, Mr. Wheeler, and Mr. Hastings—the two first being a *majority* of the Board. This omission was the more unpardonable, because the *gist* of the charge against Mr. Hastings was his neglect of the Company's orders, who in December 1778 had disapproved of the grant of the contract to Mr. Mackenzie in 1777, because it had not been advertised.—Now as this letter arrived in Bengal in 1779, and the contract was *again* given to Mr. Mackenzie in 1780, when the disapprobation was *fresh* in the recollection of Mr. Francis and Mr. Hastings, it was *partial* and *unfair* to *sink* this *transaction*, and to go on to the grant to Mr. Sullivan in 1781, who had it precisely on the same terms with Mr. Mackenzie.

6. He should give a minute of Mr. Francis, in which he said he thought, and he thought truly, that it would be *but a pious* to give the Opium Contract on too low terms to any Contractor for very valid reasons, and which undoubtedly induced the Board not to think this a contract,

which

which every adventurer in India might speculate upon.

7. He should examine a gentleman who had been one of the Council at Patna, and accordingly Mr. Law was called to the bar, who said, that from the time he came into the service in 1765 until 1773, Opium was a monopoly for the advantage of the Company's servants at Patna; that they bought it at 200 Sicca rupees a chest, and generally sold it from 450 to 500 rupees a chest; that Mr. Hastings took it from them and gave it to the Company.

It appeared, that from 1775 to 1785, the contract price was 190 rupees a chest, for a large quantity, as large as was in most years procured, and an advance of 50 rupees a chest upon all manufactured beyond that quantity.

Mr. Plumer then gave in all his evidence to substantiate these facts, which it did *most completely*, and then the Court adjourned.

Mr. Law in the course of the day gave in a very material and important piece of evidence. The Managers had in the year 1790 called Mr. Wright from the India House, to prove *the amount of Mr. Hastings's fortune* by a statement of the *remittances made in his name*. Those on bills and on diamonds turned out to be *two hundred and thirty-eight thousand pounds*, from which the inference drawn by the Managers was, that that was his fortune. Mr. Law therefore called Mr. Woodman, who in conjunction with Mr. Francis Sykes and a Mr. Waller, were his attorneys in England. Mr. Woodman swore, that *above eighty thousand pounds of this money* never came into their hands, but was indorsed over to other persons; that bills were drawn upon them for other sums, which they paid away; and that the state of Mr. Hastings's fortune, from 1778 down to 1786, when it was finally delivered over to him, was from seventy-three to sixty-five thousand pounds; the particulars being each year respectively stated; that he never knew, nor did he believe that Mr. Hastings ever employed any other persons on money transactions, nor did he believe, that he ever remitted money, except to the three Gentlemen who had the management of his affairs. Mr. Burke did not chuse to put any question to Mr. Woodman.

ONE HUNDRED AND FIFTEENTH DAY.

MONDAY, May 27.

Mr. Plumer proceeded to complete his evidence on the Opium Contract; and he proved the great addition to the public revenue

which resulted from Mr. Hastings's having made Opium a branch of revenue for the Company in 1773. He proved also, that the plan of sending Opium to China was a very wise plan for the year it took place in; but that in fact it was not the plan of Mr. Hastings, but a scheme adopted by Mr. Wheeler, on the recommendation of a very ingenious and industrious officer, Colonel Watson.

He then proceeded to the Bullock Contract, a subject which had been much expatiated upon by men grossly and foolishly ignorant; and he proved the following facts by evidence.

1st. That so far from its being *true*, as the Charge *affirmed*, that Mr. Hastings, in the year 1779, abolished a Contract, without any complaint from the army of its inefficacy—the *truth was*, that complaints of the *most serious nature* had been transmitted from several corps of the army, to the commander in chief, and by *him* to Mr. Hastings.

2d. That no *possible remedy* for so dangerous an evil could be applied, unless by giving a Contract on such terms as should insure a faithful discharge of so important a service.

3d. That upon *this principle* Sir Eyre Coote recommended in July 1779, and the Board agreed to that Contract which is the subject of the present Charge.

4th. That by the evidence of Colonel Duff, and by various authentic documents, it appeared, that the Contract was not improvident either as to terms or numbers.

5th. That when it was converted into an *agency*, the same checks and regulations were kept up.

6th. That the experience of the *last war* fully evinced the necessity of attending most diligently to this, the most important branch of military service.

Mr. Plumer referred to the sentiments of the Marquis Cornwallis, of Colonel Duff, and of every man of experience in India, to justify the Bullock Contract.

Mr. Dallas then went through Mr. Auriol's agency for supplying the Carnatic with provisions, which with equal ability he divested of every shadow of criminality, and proved, that instead of *censure* Mr. Hastings deserved the praises bestowed upon him by Mr. Pitt (when this Charge was before the House), for having saved a nation from perishing by famine, by granting the agency to Mr. Auriol, a man, as described by Mr. Pitt, of integrity, ability, and honour. Mr. Burke continued so long in the cross-examination of

of Mr. Auriol, that it was near six o'clock when this Charge was closed.

Mr. Burke was proceeding to interrogate the witness upon matters of opinion, when

Earl Stanhope strongly insisted that it was highly improper to examine oral testimony, when all that the witness could possibly know was entered upon record, which was now in Court.

Mr. Burke replied, that the Commons of England were not bound by the opinion of an individual Peer, but only by the determination of their Lordships as a Court. He further insisted, that the defendant had frequently examined witnesses in that very mode, and therefore he claimed the same right.

Their Lordships adjourned to the Upper Chamber, and returned in half an hour, when

The Lord Chancellor declared their opinion, that the questions proposed by Mr. Burke were irrelevant, and ought not to be put.

Mr. Fox bowed to the judgment; but he hoped and trusted that in future the Managers would have the same impartiality dealt out to them as the prisoner's Counsel had repeatedly experienced.

At six the House adjourned to the Upper Chamber.

ONE HUNDRED AND SIXTEENTH DAY.

TUESDAY, May 28.

On this day the case of Mr. Hastings was totally closed. Mr. Dailis put in the whole of the evidence necessary to elucidate Mr. Bell's agency, the agency which Mr. Pitt defended most strenuously in the House of Commons.

Further documents were offered on the property of some appointments that had been made by Mr. Hastings, which Major Scott and Mr. Wright were brought forward to prove. A difficulty arose about receiving the evidence of a Mr. Bellis, who had returned to India. Major Scott was examined as to the time he came from India, and when he left Europe to proceed for the East Indies to resume his rank in that part of the world, with the reasons which had occasioned his return. The Major observed, that he could not say what might be his reasons; but one was, that he had a very moderate fortune, and a yearly increase of his family.

Several other documents were delivered in on the Bullock contract, and on the difference between the Sicca and current Rupees, which had not been marked in the accounts. Mr. Wright

explained these points in a satisfactory manner; and the Counsel for Mr. Hastings then begged leave to produce the several testimonials which had been sent from India in favour of Mr. Hastings, by the Marquis Cornwallis, as the best reply that could be given to that sort of *general abuse* which had been so plentifully heaped upon Mr. Hastings.

To this Mr. Burke made some sort of objection; but on Mr. Law reading to him a quotation *from his own speech*, in which he stood *pledged* to introduce this evidence, it passed, as also the addresses to Mr. Hastings from the Civil servants of the Company, and from the Officers of the army, and also the unanimous thanks of the Courts of Directors and Proprietors, *approved* by Mr. Dundas, Mr. (now Lord) Grenville, Lord Wallingham, and Lord Mulgrave, the Members of the Board of Control, for his *long, faithful, and able services*; and with this *mass of evidence* to rebut the charge of having *oppressed, ruined, and destroyed the Natives of India*, of having *materially affected the interests of the Company*, and *disgraced and degraded the British name and character*, did the Counsel of Mr. Hastings conclude.

Mr. Hastings, when all the evidence was closed, addressed the Court to the following effect:

MY LORDS,

My evidence is now brought to its close.

Sufficient has, I trust, been already done for every immediate purpose of necessary justification; and it is not, my Lords, from any apprehension which I entertain, lest any defects of this kind should exist, or from a vain opinion that they could be supplied by me, that I present myself once more to your Lordships' attention. No, my Lords, I leave the proof which I have offered to its just and effectual operation, without any degree of doubtful anxiety for the issue. But, my Lords, I rise for a purpose which no external testimony can adequately supply, to convey to your Lordships' minds a satisfaction which honourable minds may possibly expect, and which the solemn affirmations of a man impacted with a due sense of the sacred obligations of religion and honour can alone adequately convey.

I know that the actual motives of human conduct are often dark and mysterious, and sometimes inscrutable. As far as the subject is capable of further ascertainment, and the truth can be sealed

by

by a still more solemn attestation, it is a duty which innocence owes to itself to afford it.

In the presence, therefore, of that Being, from whom no secrets are hid, I do, upon a full review and scrutiny of my past life, unequivocally and conscientiously declare, that in the administration of that trust of Government, which was during so many years confided to me, I did in no instance intentionally sacrifice the interest of my country to any private views of my own personal advantage: that, according to my best skill and judgment, I invariably promoted the essential interests of my employers, the happiness and prosperity of the people committed to my charge, and the welfare and honour of my country, and at no time with more entire devotion of mind and purpose to these objects, than during that period in which my accusers have endeavoured to represent me as occupied and engrossed by the base pursuit of low, sordid, and interdicted emolument.

It may be expected of me to say something in addition to what you have heard from Mr. Woodman, respecting the actual state and extent of my fortune.

He has proved the total amount of my remittances from India during the period of my Government; and that the balance of my fortune, when last adjusted, shortly after my return to England in 1785, amounted to little more than 65,000*l*.

I protest in the name of Almighty God, that I made no remittances to England during that period which were not made to him, and my other Attornies joined in trust with him; that I had no other persons in England, or Europe, in trust of my pecuniary concerns; and that his account of those remittances is accurately true, according to my best means of knowledge and belief upon the subject; and that, including those remittances, I at no time possessed a fortune which exceeded, at its most extended amount, the sum of 100,000*l*. and in this calculation I would be understood to comprehend every kind and description of property whatsoever: That, at the period of my return to England, my fortune did not exceed the balance already mentioned to have been then in the hands of my Attornies by more than the sum of 25,000*l*. amounting, on the largest calculation, to an aggregate sum of between 80 and 90,000*l*. and all the property which I possess stands pledged at the present moment for the discharge of such debts as I

have contracted since the commencement of this long-depending Trial.

These are the enormous fruits of thirteen years of imputed rapacity and speculation, and of upwards of thirty years of active and important service!!!

My Lords, I know not how I can more fully and explicitly disavow every purpose of appropriating to my own benefit any of the various sums received, and applied by me to the Company's service in moments of extreme peril and exigency, than in the very terms in which I expressed such disavowal at your Lordships' bar in the month of June 1791. I again repeat, that "I solemnly, and with a pure conscience, affirm, that I never did harbour such a thought for a single instant."

If, in addition to the proof upon your Lordships' table of the justice and necessity of the measures which are the subjects of the two first Articles of the Charge, it can be required of me by an act of solemn and sacred attestation on my part to vouch the truth of my defence in these particulars, and to vindicate my character from the unfounded charge of malice alleged to have been entertained by me against the immediate objects of those measures, I once more call God to witness, that no motive of personal enmity, no views of personal advantage to myself or others, induced the adoption, on my part, of any of those measures for which I am at this day criminally questioned; but that, in every instance, I acted under the immediate and urgent sense of public duty, in obedience to the irresistible demands of public safety, and to vindicate the just rights of the Empire committed to my care against those who, in a moment of its greatest peril, were engaged in hostile confederacy to destroy it.

I have no doubts, but that upon a fair review of all the existing circumstances, and the means of information then before me, no lavish or improper expenditure of public money will be found to have taken place in respect to the contracts formed during my administration.

For the prudence and success of the regulations adopted and pursued in respect to the controul and management of the public revenue, I trust I may be allowed to appeal to the flourishing condition which the Company's provinces enjoyed during the period of my government, and which has been, from the continued operation of the same cause, in a course of progressive improvement to the present hour.

I know that your Lordships will, in your own enlightened and impartial wisdom, justly estimate the difficulties by which I was surrounded during a long and arduous period of public service : that you will allow for all the embarrassments arising from the long counteraction of my associates in the Government ; for errors resulting from the honest imperfection of my own judgment ; from occasional deference to the councils of others, and from the varying sense of expediency which at different periods governed my own.

Your Lordships well know, that the imperious exigencies of public affairs often present to the servants of the State no alternative but the painful choice of contending evils.

The transcendent and peremptory duty of my situation was to derive and to procure the necessary means of public safety. Feeling, as I did, the exigencies of the Government as my own, and every pressure upon them resting with equal weight upon my mind ; besieged, as at some times I was, by the hourly and clamorous importunities of every department of the military service ; goaded at others with the cries of our then famished settlements on the coast of Coromandel, should I have deserved well, I do not say of my country, but of the common cause of suffering humanity, if I had punctiliously stood aloof from those means of supply which gratitude or expectation had enabled me to appropriate to the instant relief of such distresses ?

The whole tenor and conduct of my public life is now, my Lord, before you : it has undergone a scrutiny of such extent and severity, as can find no parallel in former times, and I trust will, in many of the peculiar circumstances which have characterized and distinguished this Trial, leave no example to the future.

My Lords, I have now performed the most solemn duty of my life, and with this I close my defence.

I may now, I trust, assuredly consider myself as arrived at the threshold of my deliverance ; at that period when no delay or procrastination can prevent the speedy and final termination of the proceedings now depending before your Lordships.

After such recent and acceptable proof on the part of your Lordships, of your earnest disposition to accelerate the conclusion of this Trial, it would betray an unwarranted and unbecoming distrust of your justice, to offer any request to your Lordships on this subject, had I not other

causes of apprehension. At this momentous and awful crisis, ignorant of what may be in the minds of others, I am compelled to obviate every possible, even though improbable danger.

In the short address which I made to your Lordships on Friday last, I stated, that I should waive the observations of my Counsel on the evidence of the Article then before the Court, and both the opening and the application of the evidence on the next ; and that I made these sacrifices, well aware of their importance, for the express purpose of affording ample time to my prosecutors, during what remained of the probable term of this Session, to make their reply.

If the Managers for the Commons had been equally desirous of accelerating the close of this Trial, and I had a right to suppose that they were so, from their repeated declarations to that effect, what I had said might have been construed as an offer of mutual accommodation : but, my Lords, it was received with resentment, and answered with reproach, and worse insinuation.

What other conclusion can I put upon this conduct, but that which is conveyed to my ears from every quarter ; that they mean to endeavour to prevail on your Lordships to adjourn over this Trial to its seventh year, that one more may be given them to prepare their replies. I do not know that this is their intention ; but I may be allowed to suppose it ; and though impressed with the firmest confidence of the just and favourable disposition of your Lordships, I cannot but dread the event of a question in which my rights may be at issue with such opponents as the Managers of this prosecution, speaking in the name of the House of Commons, and of all the Commons of Great Britain.

To meet such an attempt, if made, I humbly offer to your Lordships the following arguments, most anxiously recommending them to your consideration.

In an address to a Court of British Peers, I cannot offend by pleading the rights which I possess as a British subject—rights which are assured to me in common with all my Fellow-Subjects of this realm, by the pledges of ancient charters, and the sanction of an oath, the most solemn that can be tendered or taken by man. My Lords, I claim the performance of that sacred promise, in all its implied obligations, that justice be administered to me, and that it be administered now.

In the long period of another year, I may be numbered with those of my Noble Judges whom I have, with sorrow, seen drop off year after year; and in aggrava-

tion of the loss which I have sustained by their deaths, I may thus lose the judgment of their survivors by my own. To the *precepts and sanctions* of the

* *List of Peers who have died since the Commencement of the Impeachment.*

DUKES.			
Cumberland	Manchester	Montagu	Montrose, Earl Graham.
Chandos	St. Albans	Somerset	
EARLS.			
Huntingdon	Clarendon	Pomfret	Kinnoul
Ferrers	Sandwich	Hardwicke	Stanhope
Paulet	Strafford	Orford	Oxford
Effingham	Cowper	Frederick Earl of	Talbot
Francis Earl of Guild-	Waldegrave	Guildford	Mansfield
ford	Darlington	Abercorn	Buckinghamshire
VISCOUNTS.			
Montague	Bolingbroke	Courtney	Dudley and Ward
BARONS.			
Le Despencer	Berwick	Rodney	Mulgrave
Say and Sele	Heathfield	Gage	Foley
Grantley	Craven	Dover	Camelford.
Boringdon			
BISHOPS.			
Dr. Shipley, of St. Asaph	Dr. Law, of Carlisle	Dr. Horne, of Norwich	
Halifax, of St. Asaph	Thurlow, of Durham	Wilson, of Bristol	
Beauclerk, of Hereford	Ross, of Exeter	Thomas, of Rochester.	
Harley, of Hereford			

SCOTS PEERS in the last, but not in this Parliament.

Marquis of Lothian	Earl of Aberdeen	Earl of Galloway	Earl of Dunmore
Earl of Caillies	Selkirk	Hopetoun	Kinnaird.

CREATIONS.

Duke of Clarence	Lords Fiferwick	Lords Douglas, Earl	Lords Harewood
Lords Heathfield	Fife	of Moreton	Gage
Kenyon	Grimstone	Douglas, Lord	Grenville
Dover	Mulgrave	Douglas	Auckland.
Malmesbury			

NEW BISHOPS.

Dr. Douglas, of Salisbury	Dr. Horne, of Norwich	Dr. Madan, of Bristol
Cleaver, of Chester	Vernon, of Carlisle	Sutton, of Norwich
Horsley, of St. David's†	Bullet, of Exeter	Stuart, of St. David's.
Beadon, of Gloucester		

NEW PEERS OF SCOTLAND.

Earls of Kelly	Earls of Dunblains	Earls of Glasgow	Baron Somerville.
Lauderdale	Elgin	Torpichen	

PEERS who have succeeded by Descent.

Duke of Manchester	Earls Strafford	Earls Stanhope	Barons Montague, of
Montrose, E.	Effingham	Oxford	Boughton
of Graham	Guildford	Viscounts Montague	Rodney
Somerset	Darlington	Bolingbroke	Camelford
Earls Ferrers	Buckinghamshire	Courtney	Foley
Paulet	Hardwicke	Dudley and	Say and Sele
Clarendon	Orford	Ward	Grantley
Pomfret	Marquis of Abercorn	Baron Craven	Heathfield.
Sandwich	Earl Kinnoul		

Total Peers dead, or Scots Peers in the last, but not in this Parliament — 65

Total Creations, new Bishops, and new Scots Peers — — — 32

Total Peers succeeding by descent — — — — — 30

Total Changes from the Commencement of the Impeachment, to Oct. 9, 1793, 127

† Since promoted to the see of Rochester, vice Dr. Thomas, deceased.

Law.

Law, I join the rights which are derived from the *practice* of it. In the other Courts of this kingdom, then criminal process is limited in its duration, by express and positive regulations.

On this high Court, charged with other various and important duties, the wisdom of our ancestors has imposed no restraint, but the rule of honour; and to that honour I make this, my last appeal; humbly praying, that if in the course of this hard and long-extended Trial, I have conducted myself with the most patient and respectful submission, and borne all the aggravating circumstances of it with a tranquillity of mind which nothing but a consciousness of integrity, and an equal reliance on your ultimate justice, could

have supported, I may obtain from your Lordships this only grace, that your Lordships will order the trial, now past its legal process, to continue to its final conclusion during the present Session.

After Mr. Hastings had finished, both Mr. Fox and Mr. Burke remarked upon the very great freedom which he had taken with the Managers, and solemnly denied, that they had the least wish for a further delay of this enormously long Trial, and that no part of the delay could fairly be attributed to them. Mr. Fox felt the charge so strongly, that he said he should appeal to *facts*, to shew that the Managers were not to blame.

* On their Lordships' return to the Upper Chamber of Parliament, they agreed, after a long conversation, to adjourn the further proceedings till *Wednesday night*.

This Resolution being immediately communicated by a message to the *House of Commons*,

Mr. Burke immediately rose, and contended that the day appointed for the farther proceeding in the Trial, which proceeding was for the reply of the Managers to the voluminous evidence adduced on the part of the defendant, and on that day closed, was a day too early for them to comply with. He said, the Lords in this Resolution had rather consulted their own dignity, than the cause of justice. He animadverted upon the extraordinary appeals made by Mr. Hastings to the Lords, to excite an indignation against the House of Commons; and dwelt with some warmth upon the conduct pursued for the purpose of affronts to the Managers, and through them to the House, whose servants they were.—The prosecution, he observed, was one instituted on the part of the nation. As the Managers of that Impeachment had been calumniated (the Right. Hon. Member here alluded particularly to what had fallen from a Right Rev. Prelate on Saturday in Westminster Hall), he was desirous that their conduct might be investigated and decided upon by the House; he wished such investigation and opinion to have the utmost possible publicity, and for that reason he should propose their conduct to be investigated by a Committee of the whole House. He should therefore move, that the House should on Monday next resolve itself into a Committee, to take into consideration the present state of the Impeachment of Warren Hastings, Esq. in which Committee it was his intention to call evidence to prove that the Managers intrusted by that House with the Impeachment had neither protracted the Trial by unnecessary delay, nor had precipitated it to the defeat of justice.

The Chancellor of the Exchequer (Mr. Pitt) was of opinion, that the House by following the precedent in the Trial of Lord Oxford, which went to the appointment of a Select Committee to examine and report, would produce expedition, and as much publicity, as by the proposed Committee of the whole House, the examination of witnesses in which would interrupt the public business of the country.

Mr. Fox with much warmth declared that the Managers had been accused in a manner, in another place, as unexampled in precedent, as groundless in point of justice. He called on the House to vindicate the characters of their servants, and for that reason should support the proposed enquiry. Insinuations of delay on the part of the Managers had been thrown out in such a manner, as to render it impossible to ascertain to what point they were directed.—He pledged himself, however, to prove, upon the minutest investigation, that the Managers had done every thing they could have done to promote a speedy conclusion to the Trial, and that the defendant had on the other side promoted every delay. It was without example, when such notorious dilatoriness had been practised by the defendant and his friends, that they should have the audacity to charge the Commons with dilatoriness. He was desirous with the Right Honourable Gentleman (Mr. Burke) that an enquiry should be gone into with every degree of publicity; he wished therefore, if the business should be referred to a Select Committee, as proposed by the Chancellor of the Exchequer, and to which he recommended Mr. Burke to agree, that the House would on the report declare their decided opinion in such a manner as should fully exempt the Managers from any degree of blame attempted to be thrown on their conduct.

Mr.

Mr. Burke declared his acquiescence to the appointment of a Select Committee;

Mr. Wigley hoped that the motion would not produce delay.

The motion for the appointment of a Select Committee was then put and carried, and the following Gentlemen were appointed the Committee :

Mr. Burke	Mr. Baker	Secretary at War	Sir M. Ridley
Mr. Pitt	Mr. Powys	Mr. Fox	Mr. Lambton
Mr. Wilberforce	Mr. C. Townshend	Mr. Sheridan	Mr. Whitbread, jun.
Lord Mornington	Lord Carysfort	Mr. Wyndham	Mr. Crewe
Mr. Jenkinson	Mr. W. Smith	Mr. Grey	Mr. Wigley.
Mr. Ryder	Mr. D. North	Mr. Dent	

The Committee were ordered to meet at eight in the evening in the Speaker's Chamber ; to have the power of adjourning to such time and place as they thought fit ; and to sit notwithstanding any adjournment of the House.—Five to be a *Quorum*.

Mr. Baker next rose to call the attention of the House to a business intimately connected with that into which they had just voted an enquiry.—What he wished to bring under the consideration of the House was a gross Libel, which their honour demanded should be in some form or other noticed and proceeded on.—In the *World* of yesterday, he said, there had been inserted a charge of the most scandalous nature on the Managers, through them on the House, and through the House on those whom they represented. As he had not decided on the form in which he should present the Libel, he would not then read it, as it would be found impossible for the House to suffer it to pass without taking some immediate step;—it attributed words to a certain person [alluding to the observations which had fallen from the Archbishop of York on that day—see p. 64. col. 1.], which he thought impossible for the person named to have used ; the Libel would therefore rest upon the assestors ; but wherever it should ultimately rest, it would be for that House, by a future proceeding, to shew, that they would not suffer their character to be traduced by any man, however high or however low. He concluded by giving notice that he would on a future day read the paper and make a motion thereon.

Mr. C. Townshend said, the Reverend Prelate alluded to had that day met a severe misfortune in the death of his daughter—he hoped therefore that the Hon. Gentleman would at least for the present abstain from his motion.

Mr. Baker ~~would~~ gave his notice for the present, and said he should take time to consider of the business, from what had fallen from his Hon. Friend.

Mr. Burke thought a way might be pursued suitable to the dignity of the House, and to the feelings of Gentlemen for a misfortune which had happened, and to which they were all liable. He did not think the question was, what had or had not passed in Westminster Hall, but whether publishing what had been published, true or false, was decent, or to be permitted, during the pendency of a Trial. He was decidedly for the prosecution of the Publisher of the Libel.

~~Mr. Baker~~ he had not noticed the Paper for the mere prosecution of the publisher, but to go so far as blame or the censure of that House could justly extend.

Mr. Sheridan rose, not to say whether the words alluded to were fit to be published or not, but to observe, that if they were fit to be spoken in Westminster Hall, or any where else, the Managers of the Impeachment were no longer fit to be entrusted by that House.

The next day [May 29], Mr. Townshend, attended by Mr. Sheridan, Mr. Grey, and others, appeared at the bar of the House of Lords, and stated, that as the evidence on the Trial of Mr. Hastings was extremely voluminous, and would require a longer time to be considered by the Managers than the time fixed by the Lords, it was therefore requisite that a longer time should be given for that purpose. The Members of the House of Commons having withdrawn,

Lord Stanhope moved, that the House should proceed on the Trial on *Monday* *five* *night*, which was agreed to.

On the following day [May 30], Mr. Townshend brought up the report of the Committee appointed by the House of Commons to examine into the state of the Impeachment against Mr. Hastings.

The report being read, a motion was made that a message be sent to the Lords to desire a further day on the part of the Managers to reply.

Mr. Wigley lamented the length into which the Trial had run, the situation of Mr. Hastings, the uneasiness of his mind, and the expence of defending his cause. He conceived that the Managers might have taken notes, and availed themselves of every opportunity to reply ; and he was persuaded, that when they exhibited the Charges they could anticipate, in a very considerable degree, the evidence that Mr. Hastings would bring forward.

Mr. Fox protested, he lamented the length of the Trial as much as any man. The learned gentleman who had just sat down seemed to throw the blame on Mr. Burke, but he was
read

ready to take his share of that blame. He should not lay the blame on the accusers nor on the defendants, nor yet on the Judges, because he could not say that any one of the three should be charged with it. The House would recollect, when this Impeachment was sent up to Westminster-Hall, the Managers proposed to try the Charges Charge by Charge. The Lords would not accede to this; they insisted that Mr. Hastings, in justice, should not be called on for his defence till the whole of the Charges were exhibited against him; for this reason, that he should have an opportunity of rebutting one Charge with the evidence of another. The Managers were accused of bringing forward inadmissible evidence. There was no general rule of evidence prescribed; when evidence was proposed, the Lords retired to their own chamber and debated the question there. He would not say but the Lords acted very properly in rejecting such evidence as they did reject; but he would say, on the other hand, that the evidence proposed by the Managers was such, that it would have been culpable on their part not to have proposed it.

It was true this was the sixth year since the commencement of this Trial, but the whole number of days in which the Lords sat on it amounted only to 116. The Lords one day would give notice, that they would attend at twelve, when the Lord Chancellor, from other official avocations, could not come down till three; the Managers under that expectation would perhaps stay somewhat later the next, when to their surprize the Chancellor had taken the chair at twelve. The opening of the Begum Charge occupied three days, which did not appear to have been entirely devoted to the cause of eloquence, for it cost the defendant's Counsel either nine to answer, and perhaps they would find it was short enough. He then contrasted the conduct of Mr. Hastings with that of the Managers—the former was not called on to make his defence till the whole of the Charges were exhibited against him—the latter agreed, and were permitted to reply Charge by Charge.

The Managers were obliged to read the whole of the evidence: Mr. Hastings was only called on to read the heads of his. The Managers were called on to make their replication in the course of ten days: Mr. Hastings had from the 30th of May to the 15th of February following to make his defence; he would leave it to the House if the Managers had not a right to expect the same indulgence.

Mr. Vansittart said, if he understood rightly, the object of the Managers in the Message to the Lords was to obtain a week longer than the Lords proposed, to digest the first Charge, which he believed was the *Benares*, and an interval of five weeks longer to prepare the second. They first, in his opinion, was not an unreasonable request. He wished sincerely that the replication could be concluded this Session. If it could, it would be still two years before the Lords could pronounce judgment; for the next Sessions would be short enough for Mr. Hastings to make his observations on the replication, and it would be necessary then that the Lords should take another Session to examine and weigh the whole in their minds.

Mr. Pitt did not expect that the Managers would be able to conclude in the present Session, as an attendance could not be expected.

The Solicitor-General said a few words, after which the House divided,

For the Motion, 87. Against it, 42. ———Majority, 45.

Mr. Burke then moved, "That a Message be sent from the Commons to the Lords, to inform them, that on a consideration of the Trial of Mr. Hastings, it would not be in the power of the Managers, in consequence of the mass of evidence not yet printed, to proceed to reply to the defence of Mr. Hastings on the day required by their Lordships, in consequence of which they desired a further day."

After some conversation this was agreed to; and Mr. C. Townshend was ordered to carry it to the Lords.

Mr. Burke again rose, and after expressing his anxiety for the honour and dignity of that House, which was implicated in the character of the Managers, moved, "That the Managers be required to prepare and lay before the House the state of the proceedings in the Trial of Warren Hastings, Esq. to relate the circumstances attending it, and to give their opinion, and make observations on the same, in explanation of those circumstances."

Mr. Long opposed the motion.

Mr. Wigley moved the previous question.

Mr. Sheridan made some jocose observations on the great attention with which the learned Gentleman had watched the conduct of the Managers at the Trial. He could not tell whether their attendance in that part of Westminster-hall was owing to their not having any professional business in any other part of the Hall. These learned Gentlemen were very desirous of hurrying on the Trial; but they should consider, that, probably, the Managers were not possessed of their great abilities, to enable them to look over the necessary speeches and evidence in so short a space of time. He should wish to see them take up the business, and hear what

an able reply they would make in that short time they proposed—he had no doubt but it would be a very curious and entertaining production.

Mr. Francis supported the motion.

The Solicitor-General wished to have it withdrawn.

Mr. M. A. Taylor supported it, and defended the conduct of the Managers during the course of the Trial.

Mr. Burke called loudly upon the justice of the House, either to dismiss him from their service as a Manager of this Impeachment, or allow him to defend himself from the aspersions which had been thrown upon his character. He claimed merit from his former forbearance on this subject. He believed the Lords had sometimes judged improperly of the conduct of the Managers; he had often felt that they had done so; and nothing but his earnest desire of the success of the Impeachment, and his unwillingness to throw any impediment in the way of it, could have induced him to be silent so long: but now, when so much calumny had gone abroad against him, it was impossible to forbear. The dignity of the House was lost for ever, if they did not boldly, openly, and manfully contradict the falsehoods which had been circulated against those persons whom they had appointed to represent them.

He never wished the House of Lords to consider its dignity or interests as separate from those of the House of Commons; when it did, all would be lost. And if the House of Commons neglected, at this time, to make itself respected by the People and the Lords, he looked upon their power of Impeachment to be gone;—he would not exert eloquence if he possessed any, nor even arguments, to defend himself:—all he wanted to state were plain naked facts, on which every man might judge for himself. Since the beginning of this Trial, his lot had been peculiarly hard. The whole body of the corruption of India had fallen upon him immediately; the Jackalls, and the Royal Tygers which they followed, began to tear him without mercy, as well as his brother Managers. He therefore once more demanded of the House to defend him or dismiss him.

Mr. Sheridan said, the public had long been accustomed to hear that the delay in the Trial of Mr. Hastings was owing to the neglect of the Managers; but when they were told that they had taken up in their opening speeches only 18 days, that the prisoner's Counsel had taken 22 days for their speeches, that the Trial might have been ended in one Session of Parliament if the Lords had chosen to attend every day, and that they had not sat many more days than some Election Committees, then the public would alter its opinion. To state and prove these things was the object of his Hon. Friend's motion, and therefore he would vote for it.

Mr. Dundas thought it would be prudent in the Right Honourable Manager to withdraw his motion, though, if he persisted in it, he would give him his vote. He agreed perfectly with him, that the Managers had had great cause of complaint, but he trusted it would not be so in future. The motion might, in its consequences, lead to a misunderstanding that would be fatal to the Impeachment.

Mr. Burke still thought his motion prudent and advisable.

Mr. Wyndham was of the same opinion. He thought the Managers had been so ill-treated, that the House ought not to lose a moment in asserting its dignity and privileges. It had been said, perhaps no insults would be offered in future. He hoped there would not: but the Managers might be treated in such a way, that they might feel themselves hurt, and yet that House could not take notice. They should let the world see they would vindicate their characters.

Mr. Jenkinson proposed, by way of amendment to Mr. Burke's motion, that the latter part of it be left out, and that no opinion or observations should be given.

Mr. Burke said, that amendment would limit the Managers too much in their defence.

Mr. Pitt, urged by the reasons used by Mr. Dundas, proposed that the previous question be admitted by the Hon. Manager; but said, that he was, notwithstanding, so well convinced of the truth of what he had asserted, that he would vote with him, if he refused to withdraw his motion.

Mr. Burke continued inexorable.

Mr. Stanley, jun. defended the Managers.

The previous question was then put, and the House divided—

For the previous question, 69. Against it, 69.

The numbers being equal, the Speaker, according to the rule of the House, decided in favour of the Managers, that is, against the previous question.

Mr. Burke's motion was now put, and there appeared

For it, 67. Against it, 71. —Lost by a Majority of 4.

On WEDNESDAY, JUNE 5, Mr. Grey rose in the HOUSE OF COMMONS, and noticing the last message from the Lords, that they would proceed further in the Trial of Mr. Hastings

on Monday next, (on which day the Managers were to reply.) declared for himself, as he had declared before, the utter impossibility on so early a day of being ready: he therefore gave notice, that he should be in his place to-morrow at four o'clock, to move a Message to the Lords for a farther delay, to enable the Managers to be prepared to reply.

Accordingly on the following day [JUNE 6], Mr. Grey, pursuant to his notice, rose to propose a message to the LORDS to postpone the further proceedings in the Trial of Mr. Hastings until the next Session. The Hon. Gentleman contended, that pressing the Managers to a reply so unexpectedly as they were called on, would be attended with considerable disadvantage to the prosecution, and afford no fair advantage to the defendant. He was ready to meet any Gentleman in that House to prove that whatever delay had arisen in the progress of the Trial, none was attributable either to the Managers or to the House. Nor was the motion he now had to propose any fair ground to attribute to the Managers a wish of delay; for the fact was, that the evidence which they had been first ordered to reply to yesterday, and were appointed to reply to on Monday next, was not yet printed. After stating it to be inconsistent with justice and equity to call on them for a reply, so situated, and the impossibility of his being sufficiently prepared by Monday next to open the reply on the first Charge, he concluded by moving, "That a message be sent to the Lords, acquainting them that the House of Commons having taken into their consideration the circumstances of the Trial of Mr. Hastings, and the prolonged period of the present Session, are not only convinced that it would not be possible to come to judgment in the present Session upon the Charges, the whole of which their Lordships have on a former occasion considered as one, but that it would be, if not impossible, extremely difficult to reply to the first Charge; to represent also to their Lordships that it would be injurious to the cause of public justice to break the reply to the Charges; and that, therefore, the Commons desire their Lordships to order the Trial to go over to the next Session, when the Commons would be ready to proceed day by day till final judgment should be given, if their Lordships thought fit."

Mr. Wigley opposed the motion, as prejudicial to the justice and character of the House, and which, if passed, would carry with it such a marked wish for delay, as would render impeachments detestable.

Mr. E. Law and Mr. Cavthorne were against the motion.

Mr. Francis was for the motion, as was

Mr. Sheridan, who observed, that the Managers were called upon to answer evidence they had not yet before them. He could not see any fair advantage the friends of the defendant could expect by precipitating the Managers to a reply in the present session, as it was wholly impossible for judgment to be obtained until the next.

Mr. Secretary Dundas rose in support of the motion. If, he said, he thought the motion could operate unjustly to the defendant, or not promote a delay of final judgment, he should have been as ready as any man to give it his negative; but he was completely satisfied that the motion would tend ultimately to hasten the conclusion.—Sending the Managers unprepared to reply, would be neither more nor less than a complete loss of the days they might so occupy themselves in; and it was his opinion that should the Managers be forced to open their report, they would not be able, in the course of the present session, to close that reply even on the first Article. Much had been said of delay, much of the Trial having continued six years; but to whom was such delay to be attributed? Not in any degree to that House, or to the Managers against whom such insinuations were neither just nor generous from those Gentlemen who had negatived a proposition made by the Managers, on a former day, of stating the whole facts on the Trial to exculpate themselves from every shadow of a foundation for such charge. The Right Hon. Secretary also observed, that the cry against delay had been uniformly made at the close of a session; why it was not made at an early period, when propositions might have been brought forward to expedite it, he left the House to form an opinion upon. If there was any delay, however, in the Trial, it, he cared not who heard him declare, or where his declaration should be repeated, lay at the door of the House of Lords. The Right Hon. Secretary had noticed the few days appointed to proceed, and the few hours occupied in those days on the proceedings, and dwelt shortly upon the deviation from the mode of proceeding in the impeachment of Sacheverell, when their Lordships did not think it necessary to proceed only when all the Judges could be present. He saw no good reason why their Lordships could not have proceeded in the Trial of Mr. Hastings, during the time the Judges were on their circuits, for their Lordships certainly had in their own body Members sufficient to decide on all points of evidence that could come before them: they had great Law Lords in the Lord Chancellor, the late Lord Chancellor, the Chief Justice, Lord Bathurst, and another great light, who, though not a Law Lord, was frequently teaching the Judges law, and the Bishop religion (Lord Stanhope was now under the gallery, and the allusion created considerable laughter).

Had

Had their Lordships proceeded without waiting for the continued presence of the Judges, he was confident the Trial might have been concluded in one, or in two sittings at the most; as they had not, he was of course to suppose they had acted wisely; but as a Member of the House of Commons, and bound to maintain its honour and dignity, he did not feel inclined so far to compliment the House of Lords as to attribute the delay occasioned by them to the Commons. It was unjust and injurious to that House to allow it to be spread through the country at large that the delay was their blame; he, for one, as a Member of that House, would not submit to have such an imputation rest against it. He wished the prosecution to be fairly carried on, and to be brought to a fair issue, for which reasons he gave the motion his hearty concurrence.

Colonel M'Leod, Mr. Ryder, and Sir John Trevelyan followed against the motion.

The question was then put, and the House dividing, the motion for the message was negatived, there being

Ayes, 61. Noes, 66.——Majority, 5.

Mr. Burke immediately gave notice that he should, next day, in consequence of the extraordinary proceedings of that day, submit a motion to the House, which he deemed absolutely necessary for its honour, dignity, and character.

On FRIDAY, JUNE 7, Mr. Grey, addressing the House of Commons, protested that he felt himself in a very awkward situation, from the fate of the motion which he had the honour of submitting to the House yesterday: such a situation, indeed, that he wished the House would accept of his resignation as a Manager. He was certain he could not resign if the House thought proper to continue him in the line which his feeble talents at present moved in, and he was candid enough to confess, that it would be with the greatest reluctance that he should leave his fellow Managers; such was the dilemma, however, to which he was reduced, that he thought it his duty to assure the House, that it was impossible for him to proceed to reply to the evidence of Mr. Hastings on the first article of impeachment on Monday next. He therefore applied to that House for instructions, and should be guided in his conduct by the decision of the same.

Mr. Burke, having alluded to the insinuations thrown out against the Managers, was surprised that as often as the fate of Mr. Hastings with regard to the length of the Trial had been commiserated, that commiseration had never been divided with two women of high and exalted rank, who had been plundered of one million of money; Mr. Hastings had been Governor-General of India fourteen years, at a salary of 30,000*l.* a-year, and yet, strange to tell, it had been held out, that a salary of 30,000*l.* a-year was the high road to beggary! Mr. Burke was proceeding when he was called to order by Mr. Rolle.

The Speaker observed, that Mr. Grey had declared that he was unable to proceed to the reply on Monday next, and that he came to that House for instruction. He did not presume to suggest any motion to the House; but if a motion should be made to intreat the Lords to put off the replication for a few days, it would in the first instance be necessary to send a Message to their Lordships to desire that they would not adjourn till the motion should be disposed of; such a Message was not without precedent in cases of Impeachment.—It being understood that the Lords had adjourned to Monday next,

The Speaker then suggested, that if a motion to put off the Trial for a further day should be put and carried, it might be sent to the Lords on Monday morning, before they left their own Chamber to proceed to Westminster-Hall; but it would be necessary that the House should be put into a state to receive the answer, and that an early attendance on that account would be absolutely necessary.

Mr. Dundas then moved, That a Message be sent to the Lords, to entreat their Lordships to put off the replication to a farther day—as it would be impossible for the Managers to proceed on Monday next.

Sir John Ingilby moved, that the gallery be cleared, so that strangers were not permitted to return till the whole business was disposed of. After a long debate the House divided—

For the Motion, 82. Against it, 46.——Majority, 36.

Mr. Burke afterwards moved, "That the Report of the Committee appointed to examine into, and report the State of the Impeachment, be also sent to the Lords," which was carried in the affirmative after a debate of some length.

On MONDAY, JUNE 10, a Petition to the following effect was presented by Lord Rawdon to the House of Lords, from Mr. Hastings:

"That your Petitioner has been informed with equal surprise and concern, that a Message has been presented to your Lordships' House, desiring further time beyond the day already appointed for the reply to the defence made by your Petitioner to the Impeachment now depending against him.

" That your Petitioner cannot but regard the further adjournment now required on the part of his Prosecutors, as derogatory to those rights which belong to him, in common with every subject of this realm; peculiarly injurious in this late stage of his long-depending Trial, as warranted by no one precedent or example to be found in the records of Parliament, by no analogy to be drawn from the proceedings in other Courts of Criminal Judicature, nor by any grounds of reason or justice applicable to the case now before your Lordships.

" That your Petitioner humbly conceives that the time first allotted by your Lordships was fully adequate to every purpose of just and reasonable preparation, supposing, what your Petitioner is bound to believe, a due and proper attention to have been given by the Managers appointed by the House of Commons to the conduct of their own prosecution, and fit and becoming diligence to have been employed, in order to have been in a condition to reply at the time appointed.

" Eight years have now elapsed since the accusation was first preferred against your Petitioner, and it is now the 6th year since the commencement of the present Trial; your Petitioner therefore apprehends he may be permitted to observe, that in a case where to much of his life has been already consumed in a Court of Criminal Justice, and so little remains, according to every reasonable probability, each unnecessary moment of delay produces to him a deep, and perhaps an irremediable injury, and, instead of receiving any palliation from the peculiar circumstances of the case, is, on the contrary, aggravated by them in the highest degree.

" After eight years of depending accusation, and six years of continued Trial, your Petitioner humbly apprehends that, on a general view of the subject, it can scarcely be supposed that those who originally framed the Articles of Accusation, and have since conducted the Trial, can be otherwise than intimately acquainted with all the transactions which form the substance of it; and however much the slow progress of the enquiry may have operated to the prejudice of your Petitioner, it must at least have contributed, by a gradual developement of the case, to render every part of it more distinctly and thoroughly understood, and consequently the Prosecutors better prepared to reply than could have happened under different circumstances.—But your Petitioner further begs leave to represent, that, besides these reasons which operate against further delay in the present stage of a Trial of such unparalleled duration, the nature of the evidence furnishes additional objections, the great bulk of the written testimony being drawn from sources equally accessible to both parties, namely, the Records of the East-India Company; and consequently those parts on which your Petitioner relies for his defence having been equally known to the Honourable Managers, before they were produced in evidence by your Petitioner, with those parts on which the Managers have relied in support of the prosecution.

" Your Petitioner ventures to affirm, and for the truth of the assertion he appeals to your Lordships' proceedings, that the written evidence produced from his own exclusive custody, is confined within a very small compass, and occupies but a very few pages of your Lordships' printed Minutes;—that the evidence of many, if not of most of the witnesses, called on the part of your Petitioner, was in a great measure known to the Hon. Managers several years ago, some of them having been examined at the bar of the House of Commons before the Articles of Impeachment were exhibited against your Petitioner; many by their own Committee; and the depositions of others of them, relative to the matters concerning which they have been since orally examined at your Lordships' bar, having been long since printed and given in evidence by the Managers themselves, in the course of the Trial.—That your Petitioner begs leave to state, that the evidence given in support of the defence, however extensive it may be at the present moment, was not brought forward nor delivered at one time, and in one mass, but in distinct and different parts, and increased by gradual accumulation to its present state; and your Petitioner, therefore, submits that the Managers, in this respect, have had a very considerable portion of time to examine such evidence.

" That in particular the evidence relating to the first article of Charge adduced by your Petitioner, was printed and delivered on the 11th of June, in the year 1792; that given on the second Article was in like manner printed and delivered, put on the 12th of April, part on the 18th of the same month, and part on the 6th of May in the present year; and all the testimony on the remaining Charges having been delivered by the 7th of June last, your Petitioner feels himself utterly at a loss to comprehend, with what colour of right the Prosecutors, who have been for so long a time in possession of so great a part of the evidence, particularly after a lapse of twelve days of allowed preparation for reply, since the final close of your Petitioner's defence, can yet claim farther time for the purpose of such preparation; since it appears from the preceding statement, that the evidence on the defence of the first Article has been in their hands a complete twelvemonth, and the next will have been in their possession,

possession, according to the most probable computation, when they shall come to reply to it, upwards of twenty days, which is a term exceeding the duration of any one criminal trial of this kingdom, of allowed legality, even in its whole process.

"That your Petitioner further begs leave to represent, that he has himself been constantly ready and attendant upon the Trial during the whole of the progress, nor has he ever, in a single instance, solicited a moment's delay; that he has, on the contrary, alone and without the aid of any co-operating application on the part of his Prosecutors, presented his humble but repeated petition for its acceleration; and under these circumstances he has taught himself confidently to expect, that an address of an opposite nature could not possibly have been prepared on the part of the prosecution.

"That your Petitioner feels this application the more peculiarly injurious to him, as in order to expedite the close of the Trial, he has waived his right to the observations of his Counsel in summing up the evidence on the 6th part of the 7th and 14th Articles of the Impeachment, and both the opening and the summing up on the Charge of Contracts; and this under the declared expectation, which he trusts was not unreasonable, that the reply would be thereby closed in the course of the present Session.

"If, however, contrary to the usage and practice which has obtained in every former instance of Parliamentary Impeachment, and in repugnance to what your Petitioner conceives to be the established principle of criminal jurisprudence the Managers of the present Charges shall continue to require further time for the purpose of their reply, and shall persist in deeming the several long and unexampled intervals of preparation which your Petitioner has stated still insufficient to enable them to execute the remainder of that duty which may be expected at their hands, and your Lordships, in deference to the urgency of such representations, shall, contrary to the earnest solicitations of your Petitioner, incline to grant them a further portion of time for this purpose, your Petitioner hopes that in any event such indulgence may be limited to a very early day, and that the Managers may then be required to proceed with uninterrupted dispatch during a course of daily and continued sittings, till the reply upon all the subjects of this Impeachment shall be fully and finally concluded in the course of the present Sessions of Parliament."

After this had been read at the Bar, the message agreed to by the Commons on Friday night [June 7] was presented at their Lordship's Bar, by Lord Carysfort, attended by several other Members.

The Lord Chancellor, having received the message, informed the Members from the Commons that an answer would be returned from their Lordships by messengers of their own.

The Members of the House of Commons having withdrawn, Earl Stanhope moved, in answer to the Message delivered by them, "That the Lords would proceed further in the Trial of Warren Hastings, Esq. on Wednesday next;" and several Noble Lords seemed to approve of this Motion; on which the Earl of Abingdon said, "It is not possible for your Lordships to refuse the application that has been made to us by the House of Commons, unless you mean to bring a national censure upon this House. Will your Lordships force a man to speak, who tells you he is not prepared to speak, or will you make a speech for him? And if you cannot do the former, and ought not to do the latter, what do you mean to do? Do you mean by a side wind, or by some manoeuvre or other, to get rid of this Trial? I trust not: but if you do, I will put my negative upon such proceedings, and upon this ground will trouble your Lordships with a Motion."

Lord Grenville then arising, and proposing an amendment, (to wit) that instead of "Wednesday next," these words should be inserted, "the second Tuesday in the next Session of Parliament," and this Amendment not altogether corresponding with the views of the motion intended by the Earl of Abingdon, his Lordship wished that his Motion might be adopted instead of the Amendment proposed by Lord Grenville, and in doing this, expressed himself in the following manner. He said,

"That in the prosecution of this Trial much blame had been imputed, but where the blame lay was not fixed. The House of Lords charge the House of Commons with this delay. The House of Commons in their turn blame the House of Lords; the Managers charge Mr. Hastings and his Counsel with it; Mr. Hastings and his Counsel impute the blame to the Managers; and thus, said his Lordship, is the blame bandied about from one to the other, without the responsibility of any, or either. That blame did exist somewhere, there was not, nor could there be any doubt; and upon investigation he feared it would be found they were "All in the wrong," and that each party had its share in that wrong: but, said his Lordship, setting aside this crimination and recrimination as productive of nothing that is useful, the question is, What is now right and proper to be done? and the answer to that question he conceived

conceived was contained in the Motion, with thereasons for that Motion, which he meant to submit to their Lordships. The Motion was this :

“ That the Trial of Warren Hastings, Esq. be postponed to the first day of the meeting of Parliament, after the ensuing prorogation, then to be re-assumed, first with a view to the limitation of its existence, and next to the time of giving judgment upon it; both to be conclusive and final within the then existing session.”

“ And his reasons for that Motion were these :—In the first place, said his Lordship, it being not possible, *rebus sic stantibus*, that the Trial could be ended in this Session of Parliament; whilst on the one hand, no inconveniences could in any degree arise to the person who was accused at the Bar, but on the contrary, that benefit would at length be derived to him from the certainty he would then have of looking to the end of his prosecution, so, on the other hand, the House would do an act of reciprocal justice to the accusers, who likewise appeared at the Bar as the Managers of the House of Commons: for, said his Lordship, it must be remembered, that when this Trial began, a proposition was made by the Managers, that each Charge should be separately heard and separately determined upon, to which proposition Mr. Hastings’s Counsel objecting, for the reason that one Charge was so implicated with the others, that his defence could not properly be made, without the whole of the Charges being gone through, he had suggested to the House at that time, the right which Mr. Hastings had of choosing his own mode of defence, and the propriety of his being indulged in that choice, and this suggestion was approved and admitted by their Lordships. The Managers, then, now come, and claim the same indulgence: they say, the Charge of Benares (first in the order of hearing) is so intimately related to and connected with the other Charges that have been brought forward, that in justice to their cause the whole ought to be considered together, and not partially, and therefore as the other Charges cannot be heard this Session, this Charge, for this reason, should be postponed with the rest; and this, his Lordship said, being what is called reciprocal justice, he thought it ought to be granted. It was true the Managers, in making this application, and Mr. Hastings’s Counsel in objecting to it, have reciprocally changed their ground, but this was their business, and not the business of the House of Lords. The business of the House was to do what was right.

“ But,” said his Lordship, “ there is one other reason of the first importance that weighed with me for this Motion. I saw, as your Lordships too must do, that the Managers themselves were as anxious to get rid of this Trial as Mr. Hastings himself was; and that both sides were equally ready and willing to catch hold of any pretence to be freed from it: but this was the duty of their Lordships to prevent.

“ The credit, the honour, the dignity, the character, nay, the very existence of the House itself depended upon their conduct in this Trial. Their Lordships were called upon as that high tribunal of justice that guards the Constitution of the country for a decision upon this very extraordinary impeachment, and a *pre-tended* decision must not take place of a *real* one.”

Some difficulty occurring about the manner of getting rid of Lord Grenville’s Amendment for the introduction of this Motion, the Earl of Abingdon agreed to withdraw his Motion, and Earl Stanhope’s motion being negatived, Lord Grenville’s amendment was put and carried upon a division of 48 to 21.

In a Note introduced in PART V. Page 15, we have given the Reader a SUMMARY of the EXPENCES then incurred by the Nation in the Prosecution of this Trial: The Correspondence between the LORDS of the TREASURY and the MANAGERS on the Subject of these Expenses, which has been since made public, we conceive to be too curious to be omitted in the present Compilation. We shall leave the Reader to draw his own Conclusions from the Perusal of the following Letters.

LETTER from Mr. STURGE, Secretary to the Treasury, to the Committee of Managers appointed for the Trial of Mr. HASTINGS.

GENTLEMEN,

TREASURY CHAMBER, 10th April 1788.

HAVING laid before the Lords Commissioners of His Majesty’s Treasury a memorial of Messrs. Wallis and Troward, Solicitors on the part of the prosecution against Warren Hastings, Esq. transmitting a state of the expences incurred by them for fees to Counsel and other charges

charges attending the impeachment, and praying an issue of such further sum, on account thereof, as their Lordships shall think fit, I am commanded by my Lords to acquaint you, that a warrant for the sum of 3,000*l.* has been issued to them for that service. My Lords, at the same time, command me to observe, that it appears the expences attending the Trial have amounted, in eleven days, to the sum of 3,495*l.*, and it appearing probable that the proceedings may continue a considerable time, my Lords are apprehensive a very heavy charge to the Public may be incurred thereby; their Lordships therefore think it their duty to submit the same to you, and to request that you will take into your consideration, whether any measures can be adopted for diminishing the charges in future.

I am, Gentlemen,

Your most humble servant,

Committee of Managers.

THOMAS STEELE.

To the Right Honourable the Lords Commissioners of His Majesty's Treasury.

MY LORDS,

WE have duly considered the Treasury minute communicated to us by your Lordships' orders through Mr. Steele's letter of the 10th instant.

We are much concerned to find a minute recorded in the Treasury books, which might possibly be construed to imply a censure on us, before we had received, either collectively or through any individual Member of our Committee, the slightest intimation of your Lordships having any doubts relative to the expence of the national prosecution committed to our care. If we had been favoured with a previous notification of your sentiments, we might have afforded your Lordships such information as would probably prevent the entry on record of a minute liable to a construction which we trust was foreign to your intention; at least we might have enabled your Lordships to state some of the facts you have referred to with more exactness than, for want of that information, they are now represented in Mr. Steele's letter.

Your Lordships are pleased to mention the expence already incurred, as arising from the few days during which the Trial had proceeded before the 10th of this month. We beg leave to acquaint your Lordships, *that, upon a strict inquiry, we find that the money advanced from the Treasury has been by no means wholly applied to the expences of the Trial, but that a considerable part of the sum has been employed in services performed before the Trial had commenced, in preparing the articles of impeachment, and in arranging and applying the evidence, relative not only to the charges on which we have proceeded, but to most of those which have not yet been opened.*

When a prosecution, extending to remote objects, intricate in its own nature, and from various circumstances rendered in every sense critical and delicate, was undertaken, we could not suppose the House not to be fully aware that they were incurring a very great expence. Whether that expence be unreasonable can only be determined by a comparison of the charge with the magnitude and value of the objects to which it is applied, and to the means necessary for obtaining them.

We conceive that justice for the people of India is an object which will well warrant a large expence; and we know that justice for the people of India cannot be obtained in Great-Britain without incurring that expence. When we come in our places to a vote for making it good, we entertain no doubt that we shall find ourselves able to support, to our consciences, to our constituents, and to the world, the share we have had in producing that charge. We know the attention that ought to be paid to the frugal expenditure of the public treasure; but we shall always steadily avow our opinion, *that some thousands of pounds from the many millions taken with so free and so strong a hand from the people of India, are properly expended in an attempt to obtain justice for the injuries they have suffered.*

The services in which the expence has been incurred have been by us generally authorized; and we have not authorized any but those which we had a full conviction could not be safely spared. The cause entrusted to us has placed us in a situation of great responsibility. We are not deficient in a proper and rational confidence in the legal qualifications of some of our Members; but they who are best able to afford us legal assistance, and whose legal assistance we highly value, are they who best know how much more is necessary. We have not the advantage of those who have gone before us in similar prosecutions, the aid and countenance of the Counsel for the Crown. We endeavoured to supply that loss by employing other Counsel, both of the national and the public law; for questions both of national and public law are involved in this prosecution; and we have abundant reason to be satisfied with their

zeal,

zeal, assiduity, learning, and ability. We had reason to think that the measure of employing Counsel had obtained your Lordships' approbation, and had even been originally adopted at the public recommendation of some of the highest authority both in your Board and in the House of Commons.

We have employed solicitors also. We originally proposed to employ the solicitors of the Treasury; but we understood that it was rather wished we should recommend our own. The names of those whom we did recommend were previously communicated, and approved; and afterwards the choice was publicly adopted by the House. We named men of reputation, and who stood high in their profession. These factions of weighty Members, and of the House itself, we do not mention, as declining full responsibility for any of the persons we have recommended, or for any of the services we have directed; but to shew how little we have always desired to be concerned in any part of the subordinate management.

We do not think any of the services we have directed, to be unnecessary or inexpedient; and we have not shrunk from our own full share of every labour. It is from an experimental knowledge obtained by frequently comparing the weight to be moved, with the force necessary to move it, that we deliberately declare to your Lordships, we rather stand in need of more assistance, than that any we now possess is superfluous.—We therefore know of no plan which can be safely adopted for cutting off any of the services. At the same time, knowing how fatal to this most important cause any thing like a difference with any Member of Parliament of great consideration must infallibly prove, we shall implicitly submit to your opinion to strike off the whole expence of Counsel, or to set aside any one or more of them whom you may point out as in your judgment unnecessary. We shall never more remonstrate upon that or any other defalcation whatsoever which your Lordships may require.

So far as to services. With regard to the compensation made or to be made for them, we are absolutely ignorant of what ought to be allowed. We therefore give no instructions whatsoever on that head. We trusted to the professional practice and experience of our solicitors; and their reputation gave us no reason to think the trust was misplaced. We have the strongest reason, from inquiry, to be persuaded, that much less has been expended in counsel, than would have been given by private parties on the like quantity of business done.

With regard to the control which ought to be applied to all public charges, it is perhaps not within our province, certainly not within our competence, to exercise it. Your Lordships, who have all necessary assistance, will undoubtedly cause a proper examination to take place, and we have no disposition to interfere so as to prevent the strictest inquiry which your Lordships' own sense of duty and propriety will induce you to institute.

We think, that in this arduous undertaking we deserve, and we are sure that we shall stand in need of, the full confidence and support of the House of Commons, and of Government.—The whole or both is not more than necessary against the strong and combined faction made in support of that delinquency which has disgraced this nation in the eyes of the world; and we are assured that nothing will be left untried to prevent that public justice which can alone restore its due honour and estimation to our country.

Signed, by order of the Committee,

By your Lordships' most obedient,

and most humble servant,

EDMUND BURKE.

House of Commons, 15th April, 1788.

END OF THE SIXTH PART.

PART VII.

1794:

BEING THE

SEVENTH SESSION (OR YEAR) OF THE TRIAL.

IN the House of Lords, on THURSDAY, JANUARY 23, 1794, the Duke of Norfolk moved, that the order upon their Lordships' Journals to proceed further in the Trial of Warren Hastings, Esq. be read; which being done, it appeared that the day appointed for that purpose was the second Tuesday in this session.

His Grace then moved, that the order be discharged, and that they should further proceed in that Trial on the 13th of February next.

A short conversation took place, supported by Lord Radnor and the Lord Chancellor, after which the Motion was agreed to *.

ONE

* On Tuesday, February 11, Mr. Wigley rose, in the House of Commons, to make a Motion, of which he had given the House notice a few days before, and which, he said, should not detain them long. It did not relate to any specific modification of the Trial of Mr. Hastings, or to put any particular period to it; but feeling, as every Member must do, the importance of coming to a speedy decision in a matter so long under agitation, he should submit a Motion, to which, from the conversation which he had had with several Members upon the subject, he did not expect any opposition. He then moved, that a Message be sent to the Lords, stating that the Commons were ready to proceed upon the Trial of Warren Hastings, Esq. from day to day, and to request them to state the specific days and number of hours which they should chuse to set apart for that purpose.

Mr. Fox rose, not to give any opposition to the Motion, but merely to advert to the latter part of the Motion, relative to the number of hours which they should appoint. From the nature of debate, it were rather hard that the Upper House should have the power of obliging them to speak as many hours as they should appoint, and therefore he thought that the latter part should be left out, or altered in such a manner as to obviate that *inconvenience*.

The Motion was then altered to the effect of what Mr. Fox suggested.

Mr. Jekyll said, that upon subjects of such magnitude, it became the House to act with dignity, and he believed from the silence which reigned universally, that no opposition would be given to the Motion. He did not mean, in what he was going to offer, to cast any stigma upon the conduct of the Tribunal before which this Trial was pending, nor any insinuation against the class of men to whom that House had delegated the trust of conducting the Impeachment; but he must avow in the most explicit manner his entire disapprobation and dislike of the unexampled and tedious manner in which the enquiry alluded to was carried on. That the delay was an attack as serious as it was violent upon the liberties of the people, independent of the expence which it had incurred to the unfortunate individual. He adverted to the speech of an Honourable Member, whose absence he particularly regretted from the unfortunate cause of it, in which he had said that Liberty was become unpopular from the frequency of the mention, and the negligence of the execution; he should then directly apply that term to the Impeachment, and from the same motives. He could not help observing, however, that there was one advantage which attended the duration, and which he hoped the candour of the Tribunal would allow the object of accusation the liberty of making use of, he meant the return of the Marquis Cornwallis, a man whose public benefits and assistance, and whose universal talents, are only to be equalled by the numerous and splendid train of his private virtues; his evidence might be of infinite advantage to the cause of the Gentleman under the imputation of those frightful enormities which had been recited and displayed in that House with so much energy of expression and persuasive effect. He should think that there could be no possible objection to the admission of such evidence; or even if there were, the influence he might have upon the minds of his noble colleagues should be a guide in a forcible manner for judging his conduct. He was proceeding in this manner when he was called to order by Mr. M. A. Taylor, who said that the Hon. Member was by no means speaking to the question, in directing the mode which the Managers should pursue.

The Speaker declared the point of order, and

PART VII.

M

Mr.

ONE HUNDRED AND EIGHTEENTH
DAY.

THURSDAY, FEB. 13.

The House having met, proceeded to Westminster Hall.

Mr. Law addressed their Lordships, and said, that Mr. Hastings, having closed his defence, could not, as a matter of right, request to be permitted to offer any new evidence; but the arrival of a person of high rank from India, whose evidence must have great weight, induced Mr. Hastings to hope, that their Lordships would be pleased to allow him to put a few questions to the Marquis Cornwallis, when his Lordship might be able to attend them, or the Court be pleased to direct it.

Mr. Grey said, that Mr. Hastings had no right to such an indulgence; but the Managers would not object to his availing himself of it.—Mr. Larkins, whom Mr. Hastings had frequently mentioned in his defence, had also arrived from India, and it might be proper for the Managers to examine him on several points.

Their Lordships afterwards retired to their own chamber, and ordered a message to the Commons, that they would proceed further on the Trial on Wednesday next.

On the following Monday, however (Feb. 17), Lord Thurlow moved, that in consequence of Marquis Cornwallis remaining still too much indisposed to be able to attend on Wednesday, the Trial might be further deferred to Monday the 24th, which was accordingly ordered on Friday the 21st; on which day, however, it was again put off to

TUESDAY, FEB. 22.

ONE HUNDRED AND NINETEENTH
DAY.

The Court met this day at one o'clock. As soon as the Peer had taken their seats, and Mr. Hastings had ap-

peared at the bar, the Lord Chancellor, who was so far recovered from his late indisposition as to be able to attend public business, informed the Managers that the Defendant, finding it not likely that Marquis Cornwallis would soon be in a condition to be examined in his place, had signified to the Court his intention of waiving the benefit which he might have derived from his Lordship's evidence.

Mr. Grey, as acting Manager this day for the Commons, said, he was extremely sorry that indisposition had prevented the Noble Marquis from attending the Trial, as the Managers would have had an opportunity of manifesting their indulgence to the prisoner, by suffering him to avail himself of the testimony of the Noble Lord, if he thought it could be of any service to him in a stage of the business when, after the prisoner had closed his case, he could not claim it as a matter of right to call any more witnesses, and when, of course, he must feel, that when the Commons were willing to admit what he had no legal ground for demanding, they were granting him a special indulgence. The Commons meant to go one step further to evince their readiness to indulge the prisoner; and in their name he (Mr. Grey) took that opportunity of informing him, that should the Noble Marquis be able to attend at any time before the Impeachment was finally closed, the Managers would, without hesitation, consent to his being examined on behalf of the prisoner, though they were not able so much as to guess how the evidence of the Noble Marquis could be of any use to Mr. Hastings, as the acts and different measures that formed the ground of the Impeachment had all taken place before the arrival of the Noble Marquis in Bengal. If it was a matter of surprise to the Managers that the prisoner should think of adducing the evidence of Lord Cornwallis, who never had any connection with the administration of Mr. Hastings, and was not in India

Mr. Jekyll proceeded upon the same grounds, when he was again stopped by the Speaker. The question was then put and carried *non est*.

In Page 1 of PART V. the Reader is requested to correct the *Seventy-Third* (as there printed) to the *Seventy-Fourth* Day; and so to carry each Day's Sitting one more in number from thence to Page 66, so as to make TUESDAY, MAY 28, in that Page, be ONE HUNDRED AND SEVENTEENTH, instead of the *One Hundred and Sixteenth* Day.

This delay was occasioned by compliance to Lord Cornwallis, who it was supposed might want time to refresh his memory with the perusal of official papers, before he appeared in the character of a witness in the Impeachment.

during

during the period of the defendant's government, it was matter of much greater surprise that he should have omitted to call another person, Mr. Larkins, lately arrived from India, who had been in his confidence abroad, and intimately connected, as the Company's Accountant General, with all transactions relative to the revenue and contracts, during the administration of Mr. Hastings. Before the arrival of this Gentleman the prisoner had often lamented that he was not present to give evidence, which he had endeavoured to make their Lordships think would be conclusive in his favour; but now that this Gentleman was in England, Mr. Hastings did not seem disposed to make any use of him. The Commons, to shew their readiness to hear anything that he could produce in his defence, would willingly break through the ordinary rules of proceeding, and allow him to produce Mr. Larkins as his witness. Should he refuse to call him, their Lordships would then be able to judge of the sincerity of those lamentations which they had so often heard, about the absence of that Gentleman.—The Managers looked upon Mr. Larkins as a person too well acquainted with all the material concerns of the prisoner's government to overlook his testimony, now that it could be procured; and therefore they gave notice, that if he was not called by the defendant, it was the intention of the Managers to call him as *their* witness, first leaving it to Mr. Hastings to call him as his own.

Mr. Law, the leading Counsel for Mr. Hastings, said, he never could think of receiving as a *boon* what he might in justice claim as a *right*. He insisted that it was the *birth-right* of Mr. Hastings, and of every man appearing on his trial in a Court of Law, to adduce evidence in his defence in any stage of the business whatever, previous to the close of the reply by the Prosecutor. He insisted, therefore, that his Client might, *ex debito iustitiæ*, claim the benefits of the evidence of Lord Cornwallis, if that Noble Lord was in a condition to give it. Mr. Hastings, however, was willing to waive it, for the purpose of preventing a further protraction of the Trial, just as he had, for the same object, declined all remarks upon the evidence given by the Managers in support of one of the Charges. ~~With respect to~~ what had been remarked about Mr. Larkins, he would say no more than

this, that his Client was not accountable to any one for the motives which induced him to call or not to call a particular witness. The Hon. Manager had intimated his intention of calling that Gentleman; he had only to observe, that he was at liberty to adduce any evidence which it was competent to him to offer in the present stage of the business, which he would be so good as to remember was that of a *reply*, not of an examination in chief. The Hon. Manager had signified this day, that he would be ready to hear the evidence of Lord Cornwallis at any future day before the close of the reply, should his Lordship be able to attend; all that he had to lay on this head was, that it would have been as candid and as generous in the Hon. Manager to have signified as much some days sooner; before the Defendant had been determined, by the circumstances of his case, to waive the examination of the Noble Marquis.

Mr. Grey, after a short reply, proceeded to adduce evidence to rebut that which had been given by the Prisoner in his answer to the Benares Charge. He observed, that the Defendant's Counsel had contended, that in the measures of the Supreme Council of Bengal relative to Cheyt Sing, Mr. Francis and Mr. Wheeler had concurred with him, and consequently, that if there was any thing criminal in those measures, he was not more to blame for it than those two Gentlemen. Mr. Grey said, that this defence, even were it founded in truth, would avail the Prisoner nothing; for it would be no extenuation of his guilt to shew that others were as deeply involved in it as he was; but he would prove that it was not founded in truth. He desired that a Minute from the Bengal Consultation to prove that Bulwant Sing was a *re* Zemindar, should be read; which was done accordingly. Mr. Grey desired that another Minute might be read, which Mr. Francis and Mr. Wheeler had taken a part; and at the same time desired that Mr. Francis should be called.

That Gentleman accordingly entered the box; and Mr. Grey said, that as the Counsel had affirmed that Mr. Francis had approved of the extra demand upon Cheyt Sing, they would shew this in conversation at the Council he mentioned his disapprobation of the measure. The question was thereupon put to Mr. Francis, Whether any of the

led in debate on the subject on the 9th of July 1778, and whether he had approved of that measure?

To this question Mr. Law pointedly objected, as leading in its consequences to another *seven years trial*:—that if the Managers were competent *now* to give evidence which they might have given seven years ago, the life of man would not be of length enough for the close of this Trial. The law of evidence, he said, was *so clear*, that no doubt could remain on the subject.

Mr. Fox and Mr. Grey replied, and contended, that as the Council had laid a *stress* on Mr. Francis's consent to the demands that were made on Cheyt Sing, they had a right to shew the nature of the debate that took place when the demand was made. Mr. Fox said, he lamented as much as any man could do the enormous length of this Trial; but he affirmed that the fault lay neither with the House of Commons nor the Managers.

To this speech Mr. Plumer made a full and most able reply. He denied, that under any possible circumstances the Managers could be entitled to examine Mr. Francis. The evidence adduced was brought by the Managers themselves. Mr. Plumer went thro' the different years, and referred to the pages in the evidence; by which it appeared, that when the war broke out Mr. Hastings proposed, on the 9th of July 1778, to call on Cheyt Sing to contribute *his proportion* to the expence of it:—that Mr. Francis *agreed*, though he expressed *some doubts* as to the right:—that Mr. Hastings was *convinced* of his having the right, inherent in *every State*, to call upon their subjects in cases of emergency; but that if the right was *not clear*, the Company would determine it:—that in the next year, 1779, Mr. Francis agreed to the demand *without any reservation*:—that in the next year, 1780, he also agreed; that he further agreed to demand the assistance of a corps of cavalry from Cheyt Sing for the service of the war:—that Cheyt Sing having demurred to the payment of the subsidy in 1780, Mr. Hastings proposed to *fine him* for his disobedience. To this Mr. Francis also *agreed*, though professing a hope that the threat would be sufficient. All these *facts*, said Mr. Plumer, were given by the Managers themselves in evidence, and as the Council had a right to avail

themselves of them in argument had they stopped there; they hoped they had stated what had a considerable effect on their Lordships and the Public, and they saw where it *pinched* the Managers. Mr. Hastings was prosecuted for measures in which Mr. Francis *had concurred*, which neither the Directors nor the King's Ministers had *disapproved*, of which the Public *had received the benefit*, and do still receive it, in the receipt of an additional revenue of two hundred thousand pounds a-year.

On all these grounds Mr. Plumer denied that there was any thing like a *reason* to justify the demand of the Managers; and that if it were not resisted, the Trial would be *perpetual*.

Mr. Grey again expressed his anxious wish for a very early end to so tedious a Trial;—that the Public *expected*, and the Managers anxiously wished it.

Some time was spent in framing the question, and just as it was about to be put,

Mr. Burke rose, though he said there was no necessity for him to rise, his respectable Fellow-Manager having said *all that was necessary*; but as he had seen, by the arguments of this day, the use that had been made of the word *acquiescence*, he rose to declare, that he did not acquiesce in any of the arguments used by Mr. Hastings's Council, nor in any of the *rules* of law they had adduced:—as to rules of law and evidence, he did not know what they meant; he and his friends had searched for them in vain:—that the character that properly belonged to a Member of the House of Commons, was that of a plain, ignorant jurymen:—that it was true, something had been written on the Law of Evidence, but very general, very abstract, and comprised in so small a compass, that a parrot that he had known might get them by rote in one half-hour, and repeat them in five minutes. These rules, such as they were, might serve for rules to the Courts below, but were not to shackle the House of Commons, nor that High Court, who in their great national prosecutions claimed a right to obtain, by whatever means they could acquire it, an *entirety* of their evidence. Unlearned jurymen as they were, they could produce, in support of their right to examine Mr. Francis, precedents from trials by impeachment,

Mr.

Mr. Burke continued to speak for a considerable time to the same effect.

Mr. Francis, having been at length asked, Whether he had attended the Consultation in question, begged leave, before he gave an answer, to request the Court would protect him from the insinuations cast upon his honour and integrity by the Counsel for Mr. Hastings, as if he was a man capable of contradicting in one place what he had done or written in another: he trusted that he should always be found incapable of so dishonourable a conduct, and he hoped their Lordships would lend him their protection against any imputations of the kind. Having premised this, he said he had attended the Consultation in question.

Mr. Grey then asked, Whether a debate had not preceded the Resolution taken by the Council as stated in the Consultation?

Mr. Francis answered in the affirmative.

He was next asked, What were the particulars of that debate?

Here the Counsel for Mr. Hastings interposed, and objected to the question, as leading to evidence entirely new, and such as it was not competent to the Managers to offer in the stage of a reply.

The substance of this objection having been repeatedly discussed in the preceding two hours debate, it was no farther agitated at present: both parties called for the judgment of the Court on the admissibility of the evidence offered by the Managers; and the Lords, for the purpose of taking it into consideration, adjourned to the Chamber of Parliament, where a conversation took place, *foribus clausis*. At half past four o'clock it was signified to the Managers, that their Lordships would not proceed farther in the Trial this day *.

THURSDAY, Feb. 27.

ONE HUNDRED AND TWENTIETH DAY.

As soon as the Lords were seated, and Mr. Hastings had made his appearance at the bar, the Lord Chancellor read the determination of their Lordships, respecting the question which had occasioned the adjournment on the

last day of meeting.—It was in substance, "That it was not competent to the Managers to examine Philip Francis, Esq. relative to the particulars of the debate which had taken place previous to the written account of the result of such debate, contained in the Minute of the Consultation of the Supreme Council of Bengal, on the 9th of March, in the case of Cheyt Sing."

Mr. Burke lamented that the Managers were left totally unacquainted with the principle on which their Lordships had formed the decision that had just been communicated by the noble and learned Lord on the Woolsack, and that conjecture was all they had now to direct them in their endeavours to discover what that principle might be. Much calumny had been heaped upon those who were concerned in the management of this Trial; they were accused of protracting it by repeatedly offering in evidence what their Lordships were obliged to reject as inadmissible. This calumny, he pledged himself, should be fully answered and refuted before the close of the Impeachment; and it should be made clear to the world, that if there was any unnecessary delay in the Trial, the blame did not rest with the Managers, or with their principals, the House of Commons. In the mean time, he could not help complaining that the Managers were put by others, not by themselves, in such a situation that the delay might be imputable to *them*, though they were not, in any degree, the cause or the authors of it. If their Lordships would be so good as to state the grounds of their decisions, the Managers though they might not approve of them, would nevertheless so far acquiesce in them, as not to offer any evidence which came within the principle on which the Court had declared some other evidence inadmissible. Why their Lordships were so secret in their proceedings, he said, he could not tell; but he knew that their ancestors had not followed such a system; for in all former times in every case of trial before that House when an objection was started to evidence, it was argued on both sides, and a question framed in the presence and hearing of the prosecutors and the prisoner, for the opinion of

* On the motion of Lord Thurlow, a question was proposed to the Judges for their opinion on the admissibility of the evidence offered in support of the prosecution.

Judges, which opinion was afterwards, in the same presence and hearing, delivered *seriatim* by the Judges. That this was the practice in all civil cases before the House of Lords, sitting as a Court of Appeal, no one pretended to deny; that it was also the practice in their Lordships' House, sitting as a Court for the trial of delinquents, he proved from numbers of authorities, but particularly from the report of the trial of Lord Mohun, for murder, in the reign of William and Mary, in the course of which a greater number of questions of law had been framed and referred to the Judges for their opinion, than on any other occasion whatever. These questions were reduced to writing, at the particular desire of that great lawyer Lord Chief Justice Holt, and the answers were given by the Judge in the hearing of the prisoner and of the Counsel on both sides. Were the same practice followed in the present trial, and he could not conceive why it was not, he was sure that much of the time of the Court, and of all the parties concerned, would be saved, and a great deal of that delay prevented, of which so much had been said. He wished their Lordships would reconsider the matter, and let the Managers know on what principle they had rested their decision; if they refused so to do, he might, at the very next question he should put to Mr. Francis, infringe that principle without knowing it, and give the Court the trouble of again adjourning to the Chamber of Parliament.—Indeed as thought they owed it to their own honour and consistency to reconsider the case. On the last day of meeting they had suffered the Managers to ask Mr. Francis whether a debate had taken place previous to the drawing up the Minute of the 9th of March; and it might well appear extraordinary, at the prosecutors should be at liberty to ask, whether such a debate had happened, but should be afterwards debarred from asking what were the particulars of that debate.

Lord Ridnor called Mr. Burke to the bar; he said the Hon. Manager ought to be restrained from arguing a point which had been already decided.

Mr. Burke answered that he was not arguing; if he had been so, the noble learned Lord on the Woolpack would not have failed to call him to the bar.

What he asked from the House, was publicity in its decisions on ques-

tions of law, and a communication of the grounds on which it formed those decisions; he had condescended to ask as a favour this, when he might have claimed it as a right.

Mr. Law said he would not waste a moment of their Lordships' time in supporting a judgment of the House, which being founded on a rule of law, wanted no other support.

Mr. Burke replied, that he had been accustomed to *resolent* observations from the Counsel, who, to do them justice, were as prodigal of bold assertion, as they were sparing of argument. He had often heard them mention the words "rule of law," but he wanted to know where the rule of which they were so tenacious was to be found? Was it in Blackstone's Commentaries? In the Code of Justinian? In *Comyns's Digest*? In truth, it was no where to be discovered but in the language of the learned Counsel. Mr. Burke contended, that he had a right to have the matter fully debated and settled.

The Lord Chancellor said, that no information could be given to the Managers on the grounds of the decision of their Lordships on the question.

Mr. Fox said, that the Managers wished to know the grounds of their Lordships' decision, that they might be able to judge whether they should put some other questions to Mr. Francis. Besides, said Mr. Fox, we could wish that all such questions were put publicly.

The Lord Chancellor said, that nothing new had been done. It had been settled at the beginning of the Trial, that any question to be submitted to their Lordships, was to be debated by both sides; a question was then to be formed upon it, and an answer given by their Lordships.

Mr. Burke said, he was sorry their Lordships had proceeded in that manner, but that their Lordships were not bound by that resolution.—Their Lordships might depart from it when they thought proper, as this Trial formed a precedent for itself. But Mr. Burke thought, that the Managers had a right to be heard on the point of law before it went to the Judges: "we should then be able to judge of the motives that had determined the decision of the Judges, and of your reasonings and conclusions on that decision; but at present we know nothing of them."

Lord Eldon said, that

vations of the Honourable Manager appeared to be extremely irregular. If the Managers have any question to put, let them do so, said his Lordship; but we cannot be called upon, as they would insinuate, to revise our decision. His Lordship was not at liberty to give the grounds of the decision of the House; but he was at no loss to give those which had influenced his own judgment: parole evidence, he said, could not be admitted to substantiate written evidence.

Mr. Burke replied, that Lord Stanhope's opinion was tantamount to "*sic volo, sic jubeo—stat pro ratione voluntas.*" But, said Mr. Burke, his Lordship can only deliver his private opinion to us; we are not bound to receive it as that of the High Court of Parliament, nor to reason upon it as such.

Lord Carnarvon said, it was impossible for their Lordships to give the reasons of their decision; nor did he conceive that it was proper for them to do so.

Mr. Grey said, We will call Mr. Francis to the bar, and ask him another question, viz. Whether, from the time of the demand made on Cheyt Sing to that of his leaving Bengal, it was in his power to have put a stop to the demand which had been made?

Mr. Law. We have given no evidence on that question; therefore we object to its being put.

Mr. Grey urged as a reason for admitting the question, that the Counsel for Mr. Hastings had reproduced the question, and made it their own; and that it was now new matter, and in issue between them.

Mr. Burke said, We asked for the rule of law which prevented us from putting the question, but no such rule was to be found. We must have the rule, either from legislative authority, or from Blackstone's Commentaries; but we are not obliged to acquiesce either in his judgment, or even in your Lordships', upon the case. We must know if the practice of any other Court can bind us, and whether such practice is uniform and invariable; for, instead thereof, we find them inconstant and unsettled.

Mr. Burke then adverted to the case of Lord Stafford, in the time of Charles I. After he had finished his defence, he demanded, that if any new matter was produced in answer to his defence, he might be allowed to answer

it. The Judges said, there was nothing more reasonable.

Mr. Burke contended, that there was no rule of law on such a case to the sound discretion of the Judge. He produced all the evidence which it was competent for us to produce at the time, can we be blamed, he asked, for not having foreseen what was to be advanced on the other side, or for not having before-hand obviated whatever it was possible for human ingenuity to suggest?

As to the doctrine of Precedents, he considered them as a herd of fiction of law: they might be falsified; they might be proved. If we admit, said Mr. Burke, the objection of the learned Counsel on the other side, we must also admit that Mr. Francis has been bribed as well as Mr. Hastings; but this we are certain was not the case. He contended, that any rule which put an end to justice ought to be disregarded: the Managers had asserted nothing of which they were not ready to produce evidence. He then quoted a Latin phrase to the following purport, "*Boni judicis est justitiam plenam dare.*" Mr. Burke then said, that the Counsel for Mr. Hastings, by reproducing the Minutes of Council, had made that Paper theirs: it was no longer ours, said he; and to call for evidence in this stage of the cause was no more than public justice.

In the case of Lord Stafford Counsel were heard upon the question before it was put to the Judges. He contended, that their Lordships' opinion should be given before the parties; and that upon written evidence or documents no judgment could be formed from the letter of them, but the *quo animo* must always be inquired into.

Mr. Burke entered at great length, and spoke for upwards of an hour, upon legal authorities, and particularly upon the nature of Impeachments, which were not governed by common-law rules.

Mr. Fox said, From the brevity of the answer of the Counsel on the other side, we are obliged to go at great length into the subject; and, after all, we must wander in the wild field of conjecture, having no certain rule to guide our judgment. The opinion of a Noble Earl (Stanhope) about a written document, does not apply to the present question; nor are the rules which have been laid down supported by authority, which

then applied to the case of Impeachments.

He said, he agreed in general with what had been advanced by Mr. Burke on the subject, and would only add some further observations to his. He would oppose the cases of the Earl of Straford and of Viscount Stafford to all the learning of the Judges. The publicity of the decision of the Judges was that which made him respect them; but their rules of judging, or those of the Courts below, were not to direct the practice of Parliament; for the "*lex et consuetudo parliamenti*" was superior to every other rule.

We will not submit, said Mr. Fox, our consciences to technical terms; nor will I submit my opinion to that of any Lawyer, however respectable he may be: an English Gentleman is as good a judge of the Constitution as any person whatever. The High Court of Parliament will fail in its duty if it submit to the judgment of others, and is not determined solely by its own: in such a case their Lordships would betray the trust committed to them as the Guardians of the Constitution. All rules must be judged according to their principle, not according to their letter. Suppose a piece of evidence was given in one view by the Prosecutor, and applied to another by the Defendant, could it be argued that no answer could be given to it? We have given the Minutes of the Council in one view, and the Defendant's Counsel have taken them in another. Suppose we had made a mistake as to date, and said that was committed in 1666 which took place in 1776, would your Lordships go to judgment without rectifying it? We say that Mr. Francis did not acquiesce in the opinion given in the Minutes; Mr. Hastings's Counsel say that he did. We call upon him to prove which of the two are founded in their opinion. We produced the Paper, but not the whole of it; we desired to read the whole of it, you only allowed us to read a part: they have read the other part, and you give a decision against us, although they have brought in that part as new evidence which we were not allowed to read. We could not foresee the use they would make of the Paper, nor the defence set up, which was wholly unexpected.

Private decisions, Mr. Fox said, were a disgrace to the character of the Judges, and were a hard task on the integrity of men whom he revered. (Here Mr.

Fox was called to order.) He explained by saying he did not accuse the Judges, but blamed the want of publicity in giving their opinions.

Lord Stanhope said, that before their Lordships adjourned to their own Chamber a question must be put to the Managers; and then desired to know, to what part of the Defence of Mr. Hastings the question they proposed to put to Mr. Francis was meant to apply? His Lordship said, the Managers were under a mistake in applying the Minutes of Council to Mr. Hastings, because they applied to the Governor and Council.

Mr. Law said, that the principle which had directed the decision of the Judges was just. He had no doubt but it was formed on those unalterable principles of law which he had the honour to mention. He would not now add any thing new on the subject.

The Lord Chancellor said, that the objection of Council to the question put by the Managers was twofold, viz. 1st, that parole evidence could not be admitted to prove written evidence: and, 2dly, that no matter was to be given in evidence, which was not originally made use of by the Defendant. These were clear and distinct propositions which it was not possible for them to mistake.

Mr. Fox replied, that the Lord Chancellor had not exactly stated their question. The Managers denied the fact which the Council for Mr. Hastings stated, and wished to disprove it. He contended, therefore, that it was no new matter, but arose out of the defence set up for Mr. Hastings; and that they did not mean to prove written evidence by parole evidence, but such facts as they could not then foresee.

The Lord Chancellor applied to Mr. Law, to know if he had any observations to make; who replied, that he had none; that this question came completely within the Rule already laid down by their Lordships, and that this day, like the last, had been uselessly wasted; that he owed too much to his client, and to their Lordships, to offer a single argument in reply to all that had been asserted.

After the question was put, and when the Lords were about to adjourn to the Chamber of Parliament, Mr. Hastings rose, and said, he earnestly entreated their Lordships leave to address a few words to them; that he had put his thoughts on paper just as he was coming down to-day, and had made

made a small addition, in consequence of what he had heard on this day. Leave being very readily granted, Mr. Hastings addressed the Lords as follows :

" In the Petition which a Noble Lord (Lord Hawkebury) had the goodness to present to your Lordships from me on Monday last (Feb. 24), I informed your Lordships that I should forego the benefit which I had hoped to derive from the testimony of the Marquis Cornwallis, whose ill state of health might probably disable him from attending to deliver it, without the loss of so much time as might involve me in the peril of seeing my Trial adjourned over to another year; and I prayed your Lordships, therefore, to order that the Trial should proceed, and with that degree of acceleration and dispatch which a due regard to the general rights of justice, and the sufferings of an individual, now in the seventh year of his Trial, might induce your Lordships to adopt.

" The immediate cause of my troubling your Lordships with that Address was a report conveyed to me, that your Lordships had been pleased, in consideration of the Noble Marquis's illness, to adjourn the Trial, which stood for Monday last, to the following day, for the purpose of allowing me to make my option in the mean time, and to signify it to your Lordships, either that the proceedings in the Trial should be stopped until the Noble Marquis's health should be sufficiently restored to enable him to attend in his place, or that it should proceed without it.

" My Lords, if this information had been given to me on grounds of certain authority, I should not trouble your Lordships at this time, but rely with implicit confidence on such a pledge as it would be criminal to distrust; since it is impossible to admit for an instant the supposition that your Lordships would offer me an alternative which included so great a sacrifice, without the most absolute determination to fulfil the condition of it.

" But, my Lords, I neither know the terms on which that declaration of your Lordships was made, nor with certainty do I know that it was made at all; and when I see the time so very near in which it has been annually customary for your Lordships to adjourn the Trial for many weeks, to allow for the absence of the Judges on their Circuits, I cannot but feel the greatest alarm, lest the same obstruction should be given to the Trial even in this period of it, when the evidence on the part of the prosecution, and that of the defence, have been finally and declaredly closed, and almost a

PART VII.

whole year elapsed since the latter.

" My Lords, I beg leave to you of the great sacrifices which I made to cut off all possible cause of delay that I put my defence on two Charges almost wholly to issue on the evidence adduced by my prosecutors; and gave up the pleadings of my able arguments on both. This year, it is known to your Lordships with what earnestness and anxiety my Counsel solicited your Lordships' permission to call upon the House of Commons for his evidence, and that I have departed from the whole tenor of my conduct, *by being myself the mover of delay* to obtain it. Of these delays, and these only, I am the cause; and I thank your Lordships for admitting them. My appeal to the Noble Marquis was not made on slight grounds. When I first notified to him my intention of calling for his evidence, I had never had any communication with him respecting the subject. *But I knew what was the truth, and I was confident he would declare it. I knew his heart and mind—I knew myself, and I therefore knew with the most absolute certainty what his testimony would be.*

" Yet I have made this great sacrifice added to the past—and surely, my Lords, I am not unreasonable in exacting this only requital, that my Trial may suffer no farther delay.

" I do, therefore, most earnestly supplicate your Lordships to grant me the indulgence of a continuation of your proceedings in this Court, without any adjournment for the Circuits, or any other delays than such as the business of Parliament may render unavoidable, and that you will have the goodness to afford me such an assurance of it; as shall immediately quiet my mind from its present apprehensions.

" My Lords, do not think this request presumptuous; nor that it proceeds from an impertinent curiosity.

" My Lords, it has more urgent motives, and pardon me if I once more repeat, as my plea for making it, *that I am now in the seventh year of my prosecution in this Court, which has never before suffered any Trial, even of the most criminal nature, except in the times of originating disorder and rebellion, to exceed the period of twenty-two days. That we have been already subjected to a prosecution which has now endured six years: I may not (I may not; if I may trust to my understanding of all that I have heard this day) be the continued subject of it during six years more.*"

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As Mr. Hastings sat down Mr. Fox rose, and said, that Mr. Hastings merely repeated what he had said five years before; that the delay was not imputable to the Managers, but to the Council of Mr. Hastings, who had objected to evidence, and that in this instance Mr. Hastings allowed himself to be the author of the delay. It was true, he had been six years before the Court, but was not their time taken up in an enquiry into crimes committed in a government of fourteen years?

Mr. Burke proceeded for some time longer in a similar strain, when Mr. Hastings rose, and said, "True it is, my Lords, as the Manager has said, that I did complain *five years ago*, when my Trial was on the point of being adjourned,

as it had *l'en lasted longer than any other Trial in this Court*. I repeated my complaint in every succeeding year, *because every year was an aggravation of the hardship which I suffered*. I complained of it, my Lords, *as an abuse of justice*, and I repeat, my Lords, *that it was an abuse of justice, come from whom it may*; but is it, my Lords, any argument, that, because I have suffered a prosecution of *six years*, I should endure it *six years longer*?"

To this speech Mr. Fox replied, that he most anxiously joined with Mr. Hastings, in entreating the Lords to proceed with all possible expedition to the close of the Trial.

The Court adjourned till

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* In the following Petition, to which Mr. Hastings alludes in page 80 of PART II. and which we were not enabled at the time to introduce under its proper date and place.

"To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled;

"The Humble Petition of WARREN HASTINGS, Esq. late Governor General of Fort William, in Bengal—

"Sheweth,

"That your Petitioner was permitted by the Honourable House of Commons to appear before their bar, on the 24th of April 1786, to answer to certain charges which had been preferred against him in that Honourable House. That your Petitioner, on the 14th of May 1787, was impeached by the Honourable House of Commons of Great Britain, at the bar of your Lordships' House, of High Crimes and Misdemeanors—That your Lordships were pleased to grant your Petitioner a Copy of the Articles of Impeachment, with leave to answer the same—That on the 25th of November 1787, in the following session of Parliament, your Petitioner, according to your Lordships' order, did deliver in his answer to the said Articles, and the 13th of February 1788 was appointed for the commencement of his Trial, and it was accordingly commenced and continued by various adjournments, to the 15th of June of the same year. That your Petitioner conceived an abundant consolation, when he saw himself brought before a Court which was held in universal estimation the most just, as it was the most respectable, from the high titles and dignities, and the noble characters of the Members composing it: and impressed at this time in an equal degree with the same sentiments, and assuring himself that your Lordships will favourably receive any representation which he may conceive himself under the necessity of making to your Lordships, of the hardships which he has sustained and may yet have cause to apprehend, from the peculiar circumstances of the present Trial, he humbly presumes, in this stage of it, to state the same to your Lordships, and to pray for such redress and relief in the future process of it, as your Lordships' wisdom may be able to devise, and your justice prescribe.

"And your Petitioner humbly begs leave to observe, that one year has elapsed since the commencement of his Trial; and, in that interval, seven noble Lords, his Judges, have yielded to the course of nature; some of the persons whose evidence was required for his defence have returned to their duty in India, and many of those who remain are detained, to the injury of their fortunes and prospects, and to some loss of the service to which they belong. That your Petitioner possesses no means of indemnifying them for their detention, nor does he presume to estimate his own right at so high a price, as to exact from any man that he should devote the prime season of his life to inaction. That such of the witnesses whose conveniences may permit it, or whose inclinations may prompt them to remain, many must, by death, or the variable accidents of life, be taken from him before the time of his defence. That his health, which a long residence in an ungenial climate had impaired, has been precluded from receiving the only remedy which foreign air could afford for its restoration, and the only palliative which a state of ease could afford it at home; his fortune wasted in the expences unavoidably incident to so heavy a prosecution, and his person thrust out from its place in common society; with other su-

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SATURDAY, MARCH 1.

ONE HUNDRED AND TWENTY-FIRST DAY.

The Lord Chancellor delivered the resolution of the Lords: "That the Managers were precluded from examining Mr. Francis as to his dissenting from the measure of fining Cheyt Sing, he having already given his assent in writing."

Mr. Grey replied, that he must submit, but would be under the necessity of offering to them another piece of evidence, which would probably fall under the same objection. Without such evidence, Mr. Grey said, both the Prosecutors and Judges must labour under great inconvenience, and wander in the dark without any thing to direct them. The evidence was, a Letter produced by the Managers, which the

Counsel for Mr. Hastings had used in a view directly opposite to that for which it was produced by them.

After some explanation had been given of the Letter, Mr. Law had no objection to its being read.

Mr. Wyndham desired to know if they obtained leave to read it as a favour from Mr. Hastings's Counsel, or as a matter of right.

The reading of the Letter was to prove, that a sum allowed by the Governor and Council to one of the Rajahs, which Mr. Hastings's Counsel said was paid the day it became due, was paid by bills at fifty-one days' grace.

Mr. Law answered, that there was no difficulty in the objection, as payment was made by bills at that date the day the sum became due.

"ferings which, though most sensibly felt by him, may not be specified in an address to your Lordships.

"And your Petitioner begs leave humbly to observe to your Lordships, that although the prosecution has yet been closed upon two articles only of his impeachment, twenty articles were preferred against him by the Honourable House of Commons; *that twelve comprised in effect all the material transactions, civil, political, military, revenue, and financial, of a Government of sixteen years; that a considerable portion of this time was a period of great difficulty, danger, and embarrassment, to every dependency of the British Empire, and more particularly to the extensive territories which were under the actual government of your Petitioner, or which depended upon his exertions for subsistence and relief; that your Petitioner was therefore under the necessity, through his counsel and solicitors, of collecting and collating, from the voluminous records of the East-India Company, the whole history of his public life, in order to form a complete defence to every allegation which the Honourable House of Commons has preferred against him; for your Petitioner had not, when your Lordships were pleased to grant him a copy of the articles, neither as he now, any means of knowing whether any, or what articles, if any, were meant to be abandoned by the Honourable House of Commons. That it was not possible for your Petitioner to be prepared with the necessary materials for such a defence, without incurring a very heavy and intolerable expence, the sums which have been actually paid, and for which your Petitioner stands indebted, amounting, according to the most accurate estimate which he could procure from the best authority, to upwards of thirty thousand pounds. That this is a subject of great and serious alarm to your Petitioner, who, in the indefinite prospect before him, sees himself in danger of wanting the means of defence, and even of subsistence, should his life, which is not probable, be continued to the close of a trial, in which so small a progress has yet been made, unless your Lordships' wisdom shall enable you to afford your Petitioner that relief which he humbly solicits, and confidently hopes to receive: that your Petitioner, with all sincerity of heart, craves leave to assure your Lordships that he does not presume to state his sense of the hardships to which he has been, and is subjected by the past events of the Trial, as matters of complaint, being fully persuaded that they were unavoidably incident to the peculiar nature of such a Trial, and to the peculiar character and circumstances of the charge which was the subject of it. That he has stated them with no other motive or view than to obtain from your Lordships a deliverance from the dreadful chance of his character being transmitted on the records of your Lordships' high and august court, blasted with unrefuted criminations, and an acceleration of the time in which he may be enabled to make his innocence, his integrity, and (may he be permitted in all humility to add) his deserts apparent to your Lordships.*

"Your Petitioner therefore most humbly prays, that your Lordships will be pleased to order that the Trial may proceed, according to your Lordships' order upon the last adjournment, and that it may be continued to its close (if it be possible) without interruption.

"WARREN HASTINGS."

The Managers then said, that they had proved the ruinous state of Benares in 1784, and the Counsel on the other side had shewn its flourishing condition in the year 1790: they therefore proposed to prove in what state it was in the intermediate time. Some altercation took place on the subject: at length Mr. Hastings's Counsel consented to what the Managers demanded.

A long and tedious detail was then read from the Letters of Mr. Duncan the Resident, which occupied the Court for two hours.

The Managers then said, that Mr. Hastings had produced a Resolution of the Court of Directors, with a vote of thanks for his general conduct while Governor General in India: they proposed to read a Paper which had been read and approved by a Committee of the Court of Directors; and ordered by them to be published for the information of the Proprietors, in which some censure was thrown on Mr. Hastings for a Letter he had written to the Court while he was in India. The Managers meant to shew by this Paper, that the Directors had not approved of every part of the conduct of Mr. Hastings.

Mr. Law objected to the reading of this Paper: He said, it was a party pamphlet, and a libel on Mr. Hastings in his absence; that those who had ordered it to be published had no authority to do so, and were punishable for what they had done; that it was at a time when a certain Bill was brought in, and a Board of Controul was established; and that no use whatever could be made of such an unauthorized publication.

Mr. Fox answered, that he had observed the disrespect which the Counsel shewed personally to him, by mentioning his Bill under the contemptuous term of "a certain Bill;" but he wished, that whenever he again mentioned it, his name might be coupled with it; for so far from being ashamed, he should ever be proud to have been the framer of that Bill.—Mr. Fox, Mr. Grey, and Mr. Burke, read a part of the Paper in question, to shew that it was authentic, and published by the direction of a Court of Directors.

Mr. Hastings addressed the Court with much feeling.—It was true, that such a vote of censure had passed before the Directors were fully informed respecting the whole of his conduct. When the whole system of his government had been completely investigated upon his return, that Court approved of it,

and gave him their unanimous thanks for the whole of it, during the time he was their Governor-General. This approbation, both in the eye of law and reason, had, he hoped, effectually obliterated the censure. It was therefore a species of unparalleled cruelty to bring it forward to oppress a man who had already suffered so much, for no other reason which he could divine, than having, at a time of great public danger, effectually saved his country, and saved India. He relied upon their Lordships humanity, honour, and justice, that they would not suffer this minute of the censure to be read; it being passed at a moment of intemperate heat and agitation, and utterly extinguished by a subsequent resolution."

Mr. Burke rose as soon as Mr. Hastings had concluded, and contended that the Paper was proper to be received, because it was an answer to a Letter which the Prisoner had dared to write to the Directors his Masters, and to print and publish in Calcutta.

Mr. Hastings instantly rose, and said, "My Lords, I affirm that the assertion which your Lordships have just heard from the Manager is false. I never did print or publish any Letter in Calcutta that I wrote to the Court of Directors. I knew my duty better. That assertion is a libel; it is of a piece with every thing that I have heard uttered since the commencement of this Trial, by that *authorised, licensed*—" (and after a long pause he added, turning to Mr. Burke) "*Manager!*"

Mr. Burke continued to affirm that Mr. Hastings had printed and published the Letter in Calcutta. Mr. Hastings loudly called out to him, it was not true; and the Counsel said to Mr. Burke, *No!*

The Managers persisting in their right to put the question, Mr. Hastings again rose, and said, "Let me again most earnestly implore your Lordships attention to the extreme hardship and cruelty under which I labour. It has been usual for the Lords to adjourn during the Spring Assizes. My Lords, a period of six weeks of distracting anxiety, at my time of life, and in my broken state of health, is indeed *more than I can possibly bear*. I therefore do most solemnly invoke your Lordships' justice and compassion, that you will make such arrangements, in order that I may not lose so important a period in the session as six weeks, that some prospect may appear of finishing my Trial, and receiving judgment, if I deserve it, during the present session of Parliament."

Mr.

Mr. Fox. We are ready, my Lords, to proceed *de die in diem*, and to begin as early in the morning as your Lordships please; and to sit as late as will be convenient; we wish not to delay the Trial a moment.*

The Court adjourned to the Upper Chamber of Parliament, when it was at length agreed to put the following question to the Judges: "Shall a Paper, read and approved by a Committee of the Court of Directors, and afterwards ordered to be published by the Court of Directors, in answer to a Letter written to them by Mr. Hastings, be given in evidence to rebut the evidence given of the approbation of the conduct of Mr. Hastings by a vote of thanks to him for his general conduct in India?"—by whom it was determined, that it was *not competent* to the Managers to read the observations.

But it being then near five o'clock, and the Lords conceiving it to be absolutely impossible to go on without the Judges, adjourned the Court to Monday the 7th of April*.

MONDAY, APRIL 7.

ONE HUNDRED AND TWENTY-SECOND DAY.

The Court met this day after the adjournment for the Circuits, at two o'clock, when the Lord Chancellor informed the Committee of the Commons, that the evidence brought before the Court, that the Court of Directors had censured the conduct of Mr. Hastings respecting Cheyt Sing, was inadmissible. Upon this, Mr. Burke rose, and said, that though they might offer other reasons in addition to those which they had before offered, to induce their Lordships to consent to the admission of it, yet they would acquiesce in the decision, and he declared that all the evidence in reply upon the Benares Article was closed.

As Mr. Sheridan was rising to speak, Mr. Plumer begged to be heard for a very few moments. He said, that when their Lordships adjourned last, the state of the

health of the noble Marquis Cornwallis was such as to render it extremely doubtful at what period he would be enabled to give his attendance in Westminster-hall; that Mr. Hastings, from the anxiety he had invariably displayed to bring this intolerably tedious Trial to a close, had informed their Lordships that he would forego the testimony of the Noble Marquis: but the adjournment of their Lordships was attended with this good effect, that Lord Cornwallis, he was happy to say, was now restored to health; and as the Managers had expressed their concurrence to the Noble Marquis's examination at any period prior to the close of their own evidence, he hoped the Court would permit Mr. Hastings to call Lord Cornwallis on the first day that their Lordships should sit.

Mr. Sheridan said, that the Managers had expressed their willingness to give Mr. Hastings the benefit of Lord Cornwallis's testimony, and therefore they should make no objections. He then repeated what had before been said as to Mr. Larkins, whom they would also allow Mr. Hastings to call if he chose.

Mr. Plumer said, he did not intend to call any further evidence than Lord Cornwallis, and if the Managers introduced further evidence, they would of course state the grounds on which they were entitled to call it, *in reply*.

After this point was settled, Mr. Sheridan commenced his evidence *in reply* upon the Begum Article; in the course of which extracts from the Code of Mahometan Laws were read to prove the nature and regulations of property in the Eastern Countries, where those laws in a great degree prevail, and for the express purpose of applying them to the case of the Begums, whose possessions were under consideration.

A conversation, rather than an argument, was continued between Mr. Sheridan and Mr. Burke on the one side, and Mr. Dallas and Mr. Plumer on the other, for two hours, relative to the evidence which Mr. Sheridan produced,

* On Thursday, March 6, Mr. Burke moved in the House of Commons, "That a Committee be appointed to inspect the Journals of the House of Lords, and to examine into the mode of procedure that was adopted on the Trial of Warren Hastings, Esq." The Motion being agreed to, the Managers of the Impeachment were appointed the said Committee.

On Monday, March 17, Mr. Burke moved, "That the Managers appointed to conduct the Trial of Mr. Hastings do lay before the House the circumstances which have retarded the progress of the said Trial, with their observations thereon." Ordered.

and which in all instances was admitted. We do not enter into any detail of this evidence, because not a line of it applied to the points on which the Charge rests, but was, as it was stated by Mr. Sheridan, merely intended to fill up chasms which were left in the evidence, by the Counsel having followed the mode recommended by Mr. Sheridan himself, namely, that each party should enter such parts of letters and documents as each relied on, to make good their case. They were all of no consequence; some related to events which happened so far back as the years 1775 and 1776.

At half after four o'clock, Mr. Sheridan said, that he had completed all the evidence which he meant to offer *in reply* on the *Second Article*. It was then agreed, that the Marquis Cornwallis should be examined on Wednesday; Mr. Burke adding, that he did expect Mr. Hastings would have proposed to examine Mr. Larkins, but that the Managers certainly would do it.

The Court, after this conversation, adjourned until

WEDNESDAY, April 9.

ONE HUNDRED AND TWENTY-THIRD DAY.

The High Court had this day a fuller attendance of Peers, and of Spectators, than on any day for the last three years, in consequence of the expected examination of the MARQUIS CORNWALLIS.

At two o'clock the Court being assembled with the usual forms, the Noble Marquis was sworn in his place.—The Counsel for Mr. Hastings then proceeded to interrogate his Lordship.

After some precatory questions about the time of his departure from England, his residence in India, and his return, the Counsel for Mr. HASTINGS asked—Whether, upon his Lordship's arrival in India, he did not visit the provinces which were stated in the Articles of the Impeachment to have suffered from Mr. Hastings' cruelty, oppression, violence, and bloodshed?

A. He made no excursion to these provinces till the following year. In the year 1787 he went up the Ganges to the extremity of those provinces.

Q. Was it matter of notoriety that Mr. Hastings was under prosecution?

A. It was.

Q. Might not the persons whom he stood to have oppressed have sent in complaints against him?

A. It certainly was in their power so to do.

Q. Were any complaints made to the Council General against Mr. Hastings?

A. He did not remember any.

Q. What was the opinion of the natives and inhabitants of Bengal, who had been thirteen years under the government of Mr. Hastings?

A. Mr. Hastings was, he believed, much esteemed and respected by the native inhabitants, and by the inhabitants of Bengal in general.

Q. Were not the natives of the Mogul provinces bound to give aid in time of war to the Nabob?

A. In the Carnatic they were.—It was difficult to say what was the regulation in a Despotic Government. Persons on refusal were frequently imprisoned and dispossessed.

Q. Had his Lordship any means of knowing whether the charge against the Begums was well or ill founded?

A. He could only speak from report.—It was certainly reported.

Q. Does his Lordship know of any measure being taken to restore Cheyt Sing?

A. No—he knew of no such measure.

Q. Did he know that any part of the money paid by the Begum to the Nabob had been restored?

A. He did not.

Q. Were the Begums reduced, or are they now reduced to a state of great pecuniary distress?

A. He does not believe that they were reduced to pecuniary distress.

Q. Did the character of the British nation suffer by this conduct towards the Begums and Cheyt Sing?

A. It had not suffered, as he had ever heard.

Q. Did the inhabitants of the countries under the conduct of Mr. Hastings complain of his government, on his Lordship's arrival in India?

A. They did not.

Q. Did the same sentiments prevail as to the character of Mr. Hastings on his Lordship's departure from India as on his arrival there?

A. They did.

Cross-examined by Mr. Burke.

Q. Whether his Lordship has ever attentively read the Impeachment of the Commons of Great Britain, before this House, against Mr. Hastings?

A. I have read it; but I cannot absolutely say that I now correctly carry it in my mind.

Q. Whe-

Q. Whether your Lordship can speak to the truth or falsehood of any particular fact charged in those Articles of Impeachment?

A. I do not think myself competent to give an answer to that question. I really have not them sufficiently in my memory.

Q. Whether your Lordship has any knowledge of any sum of money, *teep*, or engagement for a sum of money, taken by Mr. Hastings, through the hands of Gunga Govind Sing, from a person called Rajah Kelloram, in the province of Patna?

A. I did not enquire into the matter. On my arrival in India, I thought it my duty to look forward, and to endeavour to improve the Country, and to correct any faults that existed in the Government. I really made no enquiries, and I cannot answer any of those questions, for I really do not know them.

Q. Whether your Lordship has made any enquiry from any person on the part of the Begums of Oude? Does your Lordship know, whether they admitted or denied the truth of the charges that were against them?

A. I never did.

Q. What Zemindars has your Lordship conversed with on the subject of Mr. Hastings's government?

A. I do not know that I ever conversed with any Zemindar about it. What I mentioned was merely from public report.

Q. Whether your Lordship has not, in stating the disposition of the Natives of the Provinces towards Mr. Hastings, received your account chiefly from the English?

A. I must have received all accounts ultimately from the English, as I did not speak the country languages; but I certainly have, through the interpreters, conversed with the Natives on that subject. I learned such accounts from them. I speak from their authority as well as the authority of the English.

Q. Whether your Lordship recollects from what Natives?

A. I really do not recollect any particular Native, as it always passed in *casual conversation*, and I never made any pointed enquiries about the matter.

Q. Whether your Lordship recollects, in any Letter you wrote, dated the 21 of August 1789, any expressions to this effect: "I am sorry to be obliged to say, that agriculture and internal

commerce have for many years been gradually declining; and that at present, excepting the class of Shroffs and Banyans, who reside almost entirely in great towns, the inhabitants of these provinces were advancing *basely* to a general state of poverty and wretchedness."—Whether your Lordship recollects that you have written a Letter to that effect?

A. I cannot take upon me to recollect the words of a Letter that I have written five years ago.

Q. To that effect?

A. I conclude I must.

Mr. Burke. We always mean not to ask to the words but to the effect, because we have the words before us.

Q. Whether your Lordship recollects the following paragraph: "In this description" (namely, the foregoing description) "I must even include almost every Zemindar in the Company's territories, which, though it may have been partly occasioned by their own indolence and extravagance, I am afraid must also be in a great measure attributed to the defects of our former system of management. The settlement, in conformity to your orders, will only be made for ten years certain, with the notification of its being your intention to declare it a perpetual and unalterable assignment of these Provinces, if the principles upon which it has been made should meet with your approbation."—Whether your Lordship recollects to have written something to the effect of these two paragraphs as well as of the first?

A. I do recollect I did write it; but in that Letter I alluded to the former system of annual assignments.

Q. Whether your Lordship recollects that you wrote, on or about the 18th of September 1789, to this effect: "I may safely assert, that one-third of the Company's territory in Hindostan is now a *jungle* inhabited by wild beasts. Will a ten-years lease induce any Proprietor to clear away that jungle, and encourage the Ryot to come and cultivate his land; when, at the end of that lease, he must either submit to be taxed *ad libitum* for the newly-cultivated lands, or lose all hopes of deriving any benefit from his labour, for which by that time he will hardly be repaid."—Whether your Lordship recollects a minute to that effect?

A. I per-

A. I perfectly recollect to have written that minute.

Q. I must beg to ask your Lordship respecting a Letter dated November 3d, 1788, containing the following sentiments: "I shall therefore only remark in general; that, from frequent changes of system, or other reasons, much is wanting to establish good order and regulation in the internal business of the country; and that, from various causes, by far the greatest part of the Zemindars, and other landholders and renters, are fallen into a state much below that of wealth and affluence. This country, however; when the fertility of its soil, and the industry and ingenuity of its numerous inhabitants, are taken into consideration, must unquestionably be admitted to be one of the finest in the world; and, with the uniform attention in Government to moderation in exaction and to a due administration of justice, may long prove a source of great riches both to the Company and to Britain. I am persuaded, that by a train of judicious measures the land revenue of these Provinces is capable in time of being increased; but with the principles of humanity, and even those of our own interest, it is only by adopting measures for the gradual cultivation and improvement of the waste lands, and by a gentle and cautious plan for the resumption of lands that had been fraudulently alienated, that it ought ever to be attempted to be accomplished. Men of speculative and sanguine dispositions, and others, either from ignorance of the subject, or with views of recommending themselves to your favour, may confidently hold forth specious grounds to encourage you to hope that a great and immediate accession to that branch of your revenue might be practicable. My public duty obliges me to caution you, in the most serious manner, against listening to propositions which recommend this attempt; because I am clearly convinced, that, if carried into execution, they would be attended with the most baneful consequences. Desperate adventurers, without fortune or character, would undoubtedly be found, as has already been too often experienced, to rent

"the different districts of the country, at the highest rates that could be put upon them; that the delusion would be of a short duration, and the impolicy and inhumanity of the plan, when perhaps too late for effectual remedy, becomes apparent by the complaints of the people, and the disappointments at the Treasury in the payments of the revenue, and would probably terminate in the ruin and depopulation of the unfortunate country."—Whether your Lordship recollects to have written any thing to that effect about that time?

A. I perfectly recollect to have written the extracts that the Honourable Manager has read.

Mr. Grey. I wish to know whether the Noble Marquis received a representation from Mr. Kirkpatrick * to the following effect: "Such is the impression which our former character and policy have left on the minds of the Natives, that, notwithstanding the many proofs, which our more recent conduct has furnished, of our being at present directed by a very different spirit, I am persuaded, that neither he, nor any other Hindostan Potentate, gives us credit for sincerity in the declarations which we have lately made on the subject. Time, no doubt, might subdue this obstinate incredulity; but who can certainly say that we shall adhere long enough to our present moderate system for the purpose of enforcing this belief?"

A. It is impossible for me to recollect the particular, it is so long ago; but I dare say the Letter was received.

Q. Does your Lordship believe that such was the impression which our former character and policy had left on the minds of the natives of India?

A. I believe that these were the sentiments of Captain Kirkpatrick; but I cannot take upon myself to say, upon oath, whether these sentiments were well or ill founded.

Mr. Grey. Undoubtedly, directly your Lordship cannot answer to such a question; but, Whether from your general observation you have any reason to doubt that that representation was well founded?

A. I apprehend I have already given every answer that can be given to that question.

* Lord Cornwallis had appointed Capt. Kirkpatrick to be Ambassador at the Court of Madras in 1787.

Q. Did not his Lordship send Mr. Duncan into the province of Benares to put it under regulation?

A. He did.

Q. Whether credit was to be given to the report of Mr. Duncan about the state and condition of that country?

A. The utmost credit was to be given to the reports of Mr. Duncan.

By Mr. Plumer.

Q. Whether large sums were not transmitted from this country to carry on the expenses of the war?

A. There were remittances.

Q. What was his opinion of Sir John Shore?

A. He had the highest opinion of Sir John Shore's integrity and abilities.

Mr. Burke, on Lord Cornwallis stating so strongly the services of Mr. Hastings in counteracting the designs of our enemies in the last general war, asked Lord Cornwallis, Whether he was acquainted with the cause of the late Maharratta war? The Chancellor said, that the question could not with propriety be put. Mr. Burke said, it might, at least, by any Lord; and Lord Stanhope said that he would put it, to prevent further argument.

By Earl Stanhope.

Q. Whether the Noble Lord knew the cause of the coalition of the India States against the British Power?

A. He heard of it before he went from England; but as he had his information in the same way as other Lords, he knew no more of it than they did.

Two very strong concluding questions were put by Lord Hawke, Whether the confederacy framed by the Native Powers in India, and assisted by the French in the last general war, did not require the utmost exertions on the part of Mr. Hastings to counteract it?

His Lordship answered, it certainly did.

Lord Cornwallis was asked, Whether by successfully counteracting those designs, and preserving the British Empire entire, Mr. Hastings had not rendered essential services to his country?

His Lordship replied, *Undoubtedly he had.*

Mr. Larkins was then called to the bar, and sworn. He had been in India for twenty years, and returned only in September last. He was for a great

PART VII.

part of that time Accountant-General to the East-India Company, and had also the arrangement of Mr. Hastings's private concerns. He had given up the books which related to the latter to Mr. Hastings on his departure from India.

Mr. Burke asked, Whether he had preserved any copies of these accounts? and, if not, from what sources he drew the account transmitted to Mr. Devaynes in 1786?

The Counsel for Mr. Hastings objected to the question, as leading to re-open an Article of the Charges which had been closed nearly two years since. The Managers, in bringing evidence to reply, were not to be allowed to go into this latitude of examination.

Mr. Burke denied, that the Managers were bound in this instance by the common rules of evidence. They could not pump dry the ocean, which till now had separated them from Mr. Larkins: they must be at liberty, therefore, to call for his testimony at large in any stage of the Trial. It was the duty of their Lordships to seek only for substantial justice, and in that pursuit they were not bound by the rules of inferior courts. The overbearing necessity of the case demanded that they should receive the best possible evidence, in whatever stage of the Trial it could be furnished.

On this point an argument of considerable length and importance took place. The Counsel for Mr. Hastings (Messrs. Plumer and Dallas) contended, that the Managers, in their reply, could not adduce evidence but to establish some point which had been disputed, or some testimony which had been attacked. Neither of these pleas could be made use of in the present instance. If the evidence of Mr. Larkins was as necessary as it was now stated to be, they might either have moved to postpone the Trial until his return, or they might have sent out a commission to India, and have availed themselves of his evidence under that commission at an earlier period. They threw themselves on the justice and candour of their Lordships, not to suffer the Trial to be kept open on the arrival of any new evidence from India, which would prolong its duration to an indeterminate length. They quoted several cases to shew that such a proceeding was inadmissible.

Q

Mr,

Mr. Burke said, that these arguments were absurd in the extreme. They placed the Prisoner at the bar in a most contemptible point of view. He had admitted the receipt of immense sums; and he had vindicated himself by saying that he had always communicated the circumstances to Mr. Larkins, whose probity and whose honour were at that time stated to be beyond all price. He had been specifically charged with *bribery, sharping, swindling*; and to these charges he had only replied, that if Mr. Larkins were present, he could vindicate him from these calumnies. Mr. Larkins was now present. The Managers wished to sift the matter to the bottom, and to give him the advantage of the testimony which he had so long desired. But instead of wishing to clear his fame, the Prisoner, when the means, according to his own statement, were at hand, called for protection against this decisive testimony, and sought a shelter, not in his own innocence, but in a technical rule of evidence.

The Managers were ready to prove the charges of corruption by the evidence of Mr. Larkins. It was for their Lordships to decide whether that evidence should be admitted. They were now at issue on the case, and the Public, if the evidence was refused, must judge between them.

Mr. Fox and Mr. Taylor spoke on the legal propriety of admitting the evidence of Mr. Larkins. An examination by a commission they did not consider as tending to the end of substantial justice.

After some conversation, the points were reserved to be debated by their Lordships in their own Chamber.

Adjourned to

MONDAY, April 14.

ONE HUNDRED AND TWENTY-FOURTH DAY.

The Lord Chancellor informed the Managers, that the Court decided respecting the question put to Mr. Larkins, "that it was not competent in the witness to answer that question."

Mr. Larkins was then called, and several questions being put to him and answered, Mr. Burke put one of much the same tendency as that on which the Court had given their opinion.

Mr. Plumer upon this rose and said, that the question fell under the head of objection, the validity of which had already been established by their Lordships' decision; and added, "But perhaps, my Lords, I may be able to save your Lordships, and the Managers, from all further trouble on this subject. When the objection was taken to the evidence of Mr. Larkins, it was in the confident hope that no doubt could prevail any where respecting the real, and the only reason for making it, considering the past proceedings of the Trial, and the present stage of it. But, my Lords, so much has been said, so often repeated, and so industriously circulated, respecting the nature of Mr. Larkins's testimony, if it were adduced, and of the motives operating upon the mind of Mr. Hastings in resisting it, that any longer to forbear bringing these bold assertions to that test which has hitherto and invariably proved so fatal to every accusation against Mr. Hastings, namely, *the test of proof*, would be to afford some colour for the aspersions cast upon the Gentleman at your bar, as if he shrunk from this enquiry because he dreaded the result of it. Under these circumstances, Mr. Hastings cannot for a moment hesitate what part he ought to take. Anxious as he is for the close of this long Trial, but still more anxious for the vindication of his honour and character from every possible suspicion that can be thrown upon it, Mr. Hastings confidently hopes that the justice and humanity of your Lordships will prevent this or any other proceeding from having the effect of carrying over the final termination of this proceeding to another year; and in that hope, Mr. Hastings consents to waive his objection to the testimony of Mr. Larkins, and to allow to the Prosecutors all the full scope of examination to which they would have been entitled at any period of the Trial."

Mr. Burke said, that it was easy for the Counsel of Mr. Hastings to concede what they could not refuse. They protested against accepting as an indulgence what they were entitled to as a right.—It was upon record, on the trial of Lord Strafford, that the Commons had a right to call and examine witnesses in chief at any time during the trial; and this protest Mr. Burke de-

fred

said to make in the most formal manner.

The Earl of Mansfield objected to the argument of the precedent. He could not, of course, object to the protest. The Managers had a right to their protest; but not to refer in it to a case which was not, in his mind, a precedent in point.

Mr. Burke insisted that it was a precedent strictly in point;—and Mr. Grey contended, that at least they had a right to state the case as a motive for their claim of right; and their quotation of the case did not compromise their Lordships.

Mr. Burke again insisted, that to examine Mr. Larkins was the right of the Commons; and said, he should request it might be now entered, "that the Commons accept the consent of the prisoner to examine Mr. Larkins, but 'take it as a matter of right, not of 'indulgence;'" and this he did in the form of a protest.

These were nearly the words which, after a long altercation, were agreed upon, instead of a much stronger protest offered by Mr. Burke.

Mr. Larkins was then examined by Mr. Burke until three quarters past five o'clock, on a variety of points respecting sums of money alleged to be taken by Mr. Hastings; about bonds of 1782; Mr. Hastings's private accounts, and his public accounts; the jewels given to Mrs. Wheeler; the account of money taken, from whom taken, and how applied. To all which Mr. Larkins answered with great composure and much firmness, that he either did not know, did not recollect, or that the questions were already answered by the facts in the public accounts. He swore that Mr. Hastings never gave him any private directions respecting any improper application or receipt of money, and seemed much hurt that Mr. Burke should suppose him to be so base and treacherous an individual, as to have taken copies of any man's private accounts who reposed a confidence in him.

Being asked as to the indorsement of the bonds, on what day that indorsement was made, he said *virtually* on the day which the date specified.

Mr. Burke demanded to know what was meant by the word *virtually*.

Mr. Larkins supposed this case—If a man thus wrote to a correspondent, "*Enclosed I send you a bill,*" the bill

was *virtually* so; because in fact it was not, at the time of writing, *enclosed*, nor could it properly be so said, until the letter was folded up.

A question was then put, to which Mr. Law objected, as a matter that would be *degrading* to Counsel to admit. It was, "Whether the witness did not 'think the conduct of Mr. Hastings 'strange?'"

This brought on a warm altercation between the Managers and Mr. Law, which was stopped by

Mr. Hastings addressing himself to the Court, and earnestly praying to say a few words. He conjured their Lordships to consider the stage of the Trial, and the season of the year. He had been much alarmed on this day by a report which it would be improper in him to state to their Lordships (meaning the report of an early prorogation). He therefore did earnestly pray their Lordships to take some steps to satisfy him that his Trial was to close, and that judgment would be given in this the seventh year of it. His future conduct would be regulated by what their Lordships should say. He meant no disrespect to them, but human patience could not sustain *this eternal Trial*. By the delays of this day he saw what he was to expect, and therefore he most earnestly prayed their Lordships to give him some assurance that his Trial would be finished in this year.

The Court adjourned to their own chamber, and sent a message to the Commons, "that they would further 'proceed on the Trial on Wednesday 'next.'"

WEDNESDAY, April 16.

ONE HUNDRED AND TWENTY-FIFTH DAY.

Mr. Burke commenced a speech on the evidence given by Mr. Larkins on the last day; he was interrupted by Mr. Law, who said it was extremely irregular to observe in the midst of an examination on the evidence of a witness.

The Chancellor said, that what Mr. Burke was about was perfectly regular and proper; on which Mr. Law gave up his objection, and then Mr. Burke proceeded on the nature of the evidence given the last day, that Mr. Hastings had invariably declared, that Mr. Larkins was privy to every process of the business of taking money privately, and

and applying it to the 'public service ; whereas it appeared that he knew nothing of any of the transactions prior to May 1782—that he knew nothing of the caborleats or obligations for money, nor of the bond.

Mr. Hastings called out, that he *never told stated the facts in the manner Mr. Burke mentioned.*

Mr. Burke fired at this interruption, and at a remark of the Counsel. He said, the Commons were *beyond all controul*, and that the Counsel, if they persisted to remark on his proceedings, must be kept in order, or the Managers must take the instructions of the House of Commons *.

To one of the questions put by Mr. Burke, Mr. Law objected in a very pointed manner, as being merely a repetition of what had been so often asked before. Mr. Burke in reply said, that the Counsel objected, because the answer would damnify their Client ; that they already had had experience enough in this Trial to know, that any attempt to controul the Managers only tended to waste time in speeches, for that the Managers would have their way.

Mr. Law with great feeling said, that their Lordships knew he had no motive whatever, but to endeavour, by confining the Managers to some sort of rule, to bring this Trial to a close in this year.

Mr. Hastings, when Mr. Law sat down, rose and said, he wished to be heard for a few moments. To the question then put by the Managers, or to any question of any kind that they might put in future, neither he nor his Counsel would object, provided their Lordships would sit and close the Trial in this year. Surely, as an Englishman, and claiming the rights of a British subject, this was not too much for him to ask. If their Lordships would only sit on this day and to-morrow to finish this evidence ; and if they would afterwards sit to finish this Trial (now in the *seventh* year of it) in this session, the Manager had his full permission to say what he pleased, and to ask what questions he pleased—no one would interrupt him.

Mr. Hastings then, in a style of natural eloquence which no studied speech could equal, said, as nearly as we can recollect, as follows : " My Lords, I beg leave

* As there seems to be some strange confusion or misunderstanding of this subject, we shall state it as it appears upon evidence :

On the 22d of May 1782, Mr. Hastings sent a letter to the Directors, informing them that he had received one hundred and ninety thousand pounds sterling, privately, which he had carried to the Company's account, and that he had received these sums at the time the Company very much wanted them, and that the whole had been applied to the public service. That if the Directors wished for further information, he was ready to answer upon honour or upon oath to any questions that should be put to him. The Directors, in reply to this letter, desired to know at what periods the several sums were received.

This letter Mr. Hastings answered from Cheltenham, and said, that if they required further information, Mr. Larkins would give it to them, who, he believed, possessed the only copy of the paper he ever possessed. Mr. Hastings wrote to Mr. Larkins, who sent the account home, which has occasioned so much enquiry.

It appears upon the evidence, that of this one hundred and ninety thousand pounds, one hundred and fifty-five thousand is so entered upon the public accounts at the time, as to leave it out of all doubt, that it was really and truly public money.

But as bonds were taken in the name of Mr. Hastings for 35,000*l.* in Nov. 1780, and in Jan. 1781, and as those bonds were not indorsed until the 29th of May 1782, the argument has been, that in that period Mr. Hastings meant to keep to himself that 35,000*l.*

Mr. Hastings, from a most thorough conviction in his own mind, that Mr. Larkins knew the bonds not to have been his property in 1781 ; and further being convinced that a declaration upon each bond, declaring it not to be his property, was written in July 1781, desired Mr. Larkins to transmit the bonds to the Company, in order, by their appearance, to verify his assertion.

Mr. Larkins made a public application to Lord Cornwallis, desiring that these bonds might be sent to the Company. He said, he made this application at the desire of Mr. Hastings, transmitted to him by Major Scott. The bonds arrived, and, instead of bearing date in July 1781, the declaration at the back of each is dated on the 29th of May 1782. Here, then, is the whole case, in which so much time has been spent.—Mr. Hastings eagerly furnished

I leave shortly to recall to your recollection the sacrifices which I have made, merely to get this eternal Trial to an end. In the year 1791 (now three years ago) I offered to waive my defence altogether, provided this Court would go to judgment. In the case made by my prosecutors, this was not agreed to. In the last year, 1793, the last session, I gave up the advantage of the observations of my Counsel on the evidence on one of the Articles, and waived both the opening and closing speeches on another Article, in order to leave time to the Managers to close their reply in the last session. Though three-and-twenty days were left to them for this purpose, they desired to postpone the Reply to this session.—Thus I lost the benefit of the observations of my learned Friends, and was deprived of the purpose for which alone I gave them up. In this session, for the first time in this Trial, I was the cause of delay. I wished to avail myself of the advantage of Lord Cornwallis's testimony; his unexpected illness occasioned two adjournments of the Court: but when I found that it would be uncertain at what period the Noble Marquis would be well enough to attend, I even waved

the benefit of his testimony that the Trial might be accelerated. The desire of the Managers to introduce evidence which your Lordships would not admit, occasioned the adjournment for the Circuits, and in that period Lord Cornwallis recovered. This was the only instance in which I delayed the Trial for a single moment.

"The Managers then wished to call Mr. Larkins; my Counsel objected, merely to avoid further delay: to them I trusted the conduct of my cause; I never instructed them to object to the calling of Mr. Larkins; they wished as I do, that in some period of the life of man, this cause should be brought to a close. Was it to be expected, my Lords, after having made so many sacrifices for the acceleration of this Trial, that I should consent to continue it to an indefinite period, to accommodate the Managers? But when I heard them declare, that if Mr. Larkins was called, such a scene of fraud, deception, and iniquity, would be discovered, that I should wish for mountains to cover me (I think this was one of the strange expressions), I earnestly entreated my learned friend (Mr. Plumer), who sat next to me, to allow him at once to be called:—he

the evidence to prove his own mistake; a strong proof, however, that he thought he was correct.

The next point is the paper transmitted to the Directors at the express desire of Mr. Hastings, from an anxiety to give the fullest answers to the questions put to him, at the period when the several sums were received.

This account was immediately sent by Mr. Larkins to the Directors; it arrived in April 1787, and the following facts appear from it:

1st. That two lacs of rupees were paid by Gunga Govind Sing into the treasury, from Dinagore; and that a balance of one lac remained in the hands of Gunga Govind Sing.

2d. That two lacs were received from Patna, and paid into the treasury as public money.

3d. That one lac and a half was received from Nuddea, and paid into the treasury.

For the first and the last sums bonds were taken in the name of Mr. Hastings, whose private property they appeared to be, until he voluntarily declared that these bonds were not his property, and that he had no right nor title to them. If therefore the charges were to be rung upon this subject for seven years longer, until one hundred thousand pounds more are expended, we must still come back to the same point: That of the money received by Gunga Govind Sing, he has not accounted for one lac; and that Mr. Larkins does not recollect his being informed that the three bonds given to Mr. Hastings in 1781, were for money, the property of the Company prior to the 22d May 1782.

These are the only two points that Mr. Larkins' evidence or his letter have a reference to at all, though he was examined so many hours in two days.

It is very material to notice, that when the Counsel opposed the examination of Mr. Larkins, Mr. Burke boldly said, that if he were called, the Commons would prove by his testimony a system of swindling, cheating, thieving, &c. &c. Mr. Burke, on this day, changed his tone, and now merely protested to prove, that Mr. Larkins was not privy to the receipt of thirty-five thousand pounds, out of one hundred and thirty thousand pounds, so early as Mr. Hastings had supposed him to be acquainted with it. This point, and the information as to the jewels supposed to be given to Mrs. Wheeler, are the only two circumstances which this great examination has produced.

thought

thought the expression of less consequence, and your Lordships determined that he could not be examined; but my Counsel concurred with me in opinion, that the best way to counteract the insinuations of the Managers was to consent to Mr. Larkins's appearance. He has now been two days before your Lordships, you have heard his testimony, and you see how much of the time has been wasted by repeating the same questions to him so often over. I say, my Lords, that I will object to no question that can be put; but surely I do not ask too much in return, when I request that you will sit to-day and to-morrow, to close this examination, so that a sufficient time may remain in this session to bring this Trial to a close—that is all I am anxious about, and that secured, neither I nor my Counsel will interrupt the Manager in any thing that he may say, however irregular it may be."

This speech had a visible effect on all who heard it. Mr. Burke had begun a reply, but was desired to proceed with his evidence, which he did, twice saying he had done, and twice rallying again, but going back previously to the questions that he had put on the last day the Court met. At length Mr. Burke said he had done, and then

Mr. Dallas began his cross-examination; the material answer to his question was, that every rupee received by Mr. Hastings had been expended in the public service. All the Lords being gone, except five or six, the Marquis Townshend moved to adjourn to the Upper Chamber of Parliament, where it was afterwards agreed to adjourn further proceedings on the Trial till the 28th of April *.

MONDAY, April 28.

ONE HUNDRED AND TWENTY-SIXTH DAY.

The Court did not meet this day until the usual hour of two, when Mr.

Dallas immediately proceeded in his cross-examination of Mr. Larkins, by which it appeared, that upon the bonds for three and a half lacks of rupees taken by Mr. Hastings in his own name he never had received one rupee of interest. It further appeared, that though Mr. Larkins did not recollect being fully acquainted until the 22d of May 1782, that these bonds were not the property of Mr. Hastings, but of the East-India Company, yet he thinks, from circumstances, that he must have had some intimation upon the subject from Mr. Hastings prior to that period, because the bonds were dated, two of them 1st and 2d of December 1780, and the third on the 23d of November 1780; of course one year's interest would become due upon them in October and November 1781. As Mr. Hastings was at that time up the country, and as Mr. Larkins had the charge of these bonds, he thought he could not have neglected to receive the interest upon them, unless he had received directions on that head from Mr. Hastings. That no interest ever was received upon them, and that they never were entered on the Books of Mr. Hastings as his private property, *he was certain*; but he cannot swear positively to being fully acquainted with the transaction relative to these bonds prior to the 22d of May 1782. In like manner, the present received from Sadanund, the Buxey of Cheyt Sing, stood upon the Company's Books, as the property of Mr. Hastings; but it was employed in the public service, and Mr. Hastings never made use of one rupee of it. That while these bonds and this deposit appeared *apparently* to belong to Mr. Hastings, he was under the necessity of *borrowing money* on his own private account from individuals, that necessity being created by the readiness always shewn by Mr. Hastings to assist those who wanted his assistance: that for the money so borrowed he was obliged to pay an interest of 10 or 12

* On Thursday, April 17, in the House of Commons, Mr. Burke brought up the Report of the Managers appointed to enquire into the causes of the delay in the trial of Mr. Hastings, &c.

The Report, which was of considerable bulk, was read a first time *pro forma*, and ordered to lie upon the table.

Mr. Burke then moved that it be printed for the use of the Members, which was opposed by Sir Pepper Arden, and others, who, wishing that it should not appear even upon the Journals, moved for the order of the day.

This was opposed by Mr. Pitt, Mr. Dundas, and Mr. Sheridan, when, after a long conversation, the Report was ordered to be printed [and which the Reader will find annexed, by way of SUPPLEMENT, to this Account of the TRIAL].

per cent. per annum, which he would not have done had he conceived the three bonds in question, or the deposit, to be his own property. That Mr. Hastings was a man known to be perfectly careless as to the state of his own private fortune, and that it was with the greatest difficulty he (Mr. Larkins) could get Mr. Hastings to devote an hour to the consideration of the state of his private affairs, so very inattentive was he to every thing that concerned himself.

Mr. Larkins said, that he believed he had the entire management of every thing that had a relation to the private fortune of Mr. Hastings. That during the thirteen years in which Mr. Hastings was at the head of the Government of India, he verily believed, *that in no one instance*, and he had full opportunities of making the observation, had Mr. Hastings done any one act, either with an immediate or a remote view to his own personal advantage; on the contrary, his *known and fixed character* was the *very opposite* to that which had been imputed to him, namely, of a man *venal, corrupt, and oppressive*, who, in all his acts, looked only to the accumulation of *exorbitant wealth*—the allegation in the Charge preferred by the late House of Commons.

Mr. Dallas closed his examination by asking Mr. Larkins, If he was the Accountant General at the time when Lord Cornwallis described him as a man whose *knowledge, abilities, and acknowledged integrity*, entitled every thing that came *from him* to the fullest consideration; apologizing for the mode in which he put the question.

Mr. Larkins answered that he was.

Mr. Dallas asked the witness one question more, which was, Whether he was obliged to Mr. Hastings for the honourable station which he had so long filled in the Company's service? He replied, that he *was not*; that he entered into the Accountant's Office as the *youngest assistant*; that he rose regularly in the same Office till he came to be the head of it, in which he was confirmed by the Directors, and did not deem himself at all obliged to Mr. Hastings for his situation.

This examination was completely finished *in half an hour*; when Mr. Burke began a cross-examination which lasted until twenty minutes after five. He began by asking Mr. Larkins, Whether he had communicated *with the*

Counsel of Mr. Hastings? To which he replied, that he had; that he avowed himself to be the *friend* of Mr. Hastings; but friend as he was *to him*, he was what he had described himself to Mr. Burke to be, *magis amicus Veritas*, and therefore, without any consideration how it might affect Mr. Hastings, he was ready to answer *any question* that could be put to him. This he had said to Mr. Burke in the Committee of the Managers, and this he now repeated.

Mr. Burke then went through a very long examination, treading again and again over and over the same ground that he had gone through before, and drawing from Mr. Larkins a more complete confirmation of his former testimony, namely, that he the witness was convinced of the purity of Mr. Hastings's intentions, of his perfect indifference to every personal consideration, and of his invariable attention to the welfare of the East-India Company. It appeared also, on his re-examination, that the Letter-written by Mr. Larkins to the Company, on which so many comments were made, was not in consequence of any *application* from the Company *to him*, but at the requisition of Mr. Hastings; that he had every reason to believe the information was *full and complete*, because the Company had never called upon him for an explanation on any one of those points which *now* were said to have been *so imperfectly stated*. Mr. Burke, offended at one of the replies of Mr. Larkins, observed, that the witness must not attempt to give *so impudent an answer*.

On Mr. Burke asking the witness to speak from *memory* to the contents of some written papers, Lord Hawke and Lord Staphope both remonstrated. At this time there were not above thirteen Lords present in the Court. Mr. Burke took fire, and after many personal allusions to the learning of the Lords, which appeared *ignorance* to ignorant men, he repeated the following lines:

*"Tape est difficile habere nugas,
"Et fulvus labor est inaptium."*

Mr. Burke continued the examination for two hours and a half, each answer bringing the points more clearly forward in favour of Mr. Hastings, as to those peculiar traits in his character which those who know him have described as the distinguishing feature in it. At last Mr. Burke touched again upon

upon the balance of one lack of ruppes, which was said to be left in the hands of Gunga Govind Sing, and which he pretended to have given in jewels to Mrs. Wheeler. Mr. Burke asked Mr. Larkins if he had had any conversation on this subject with Mr. Hastings since his arrival in England? He said he had, and since he had been examined by the Managers: that when he mentioned the circumstance to Mr. Hastings, he told him that he had not the slightest recollection of it, and could not think it possible he should have said so; but on Mr. Larkins telling him that the fact, though happening so many years ago, was so strongly impressed in his memory that he should be ready to swear to it before the Lords, Mr. Hastings replied to him, "Then, Larkins, it must be so."

At length, after repeating again and again the questions which he had asked at the examination in chief, and going through all the bonds and all the presents, and asking whether Mr. Hastings *might not* have received larger sums, of which Mr. Larkins knew nothing? to which the answer was, he did not know what he *might have received*, but that he *did not believe* he had received any other sums—and asking Mr. Larkins from whom Mr. Hastings had borrowed various sums, and whether he had repaid those sums? to which the most satisfactory answers were given—Mr. Burke said he had done; and Mr. Dallas saying he had no further questions to ask, Mr. Larkins withdrew.

On the return of the Court to the Upper House of Parliament, their Lordship sent a message to the Commons, that they would proceed further in the Trial on the next day,

ONE HUNDRED AND TWENTY- SEVENTH DAY.

TUESDAY, April 29.

Mr. Burke opened the proceedings of this day by saying, that he was going to open a *new head of evidence*, in order to convict Mr. Hastings of *fraud, robbery, swindling, cheating, and forgery*; that it was the more necessary to do so, because Mr. Larkins had attempted to palliate these crimes, by stating that Mr. Hastings was negligent, inattentive, and laboured under a total want of memory.

Mr. Law endeavoured to confine Mr. Burke within reasonable bounds,

but finding that each interruption only led to further digressions, he suffered him to proceed as he pleased, and, in a speech of one hour and eight minutes, Mr. Burke went into the explanation of the most singular evidence that ever was offered to be produced in a court of justice.

Mr. Burke began by describing Rajah Nobkissen as a *Jew*, a *Banyan*, and an *Usurer*—and added, that they had to produce from a man of this description an allegation against Mr. Hastings, which *must be true*, because Mr. Hastings had *refused to answer it*.

Mr. Burke then went through the case as it appeared on his own evidence: That Mr. Hastings had borrowed three lacks of ruppes from Nobkissen, which he had afterwards given to the Company, Nobkissen having desired Mr. Hastings to accept it; that Nobkissen had since applied to have this money again, finding that Mr. Hastings had not taken it to himself, but given it to the Company; and in the course of his speech, he pitied the unfortunate situation of this banyan and usurer Nobkissen so much, that all the suffering millions in India were for the time forgotten. Mr. Burke contended, that the bill filed in the name of Nobkissen on this subject ought to be received as evidence, in order to introduce the answer given by Mr. Hastings, which was, that as an impeachment upon this very subject was depending, he declined giving any answer at all to the bill filed against him. Mr. Burke argued, that the declining to give an answer was a confession of guilt.

Mr. Law very fully answered the argument of Mr. Burke. He said, that the Manager's arguments tended to make a trial *perpetual*; that there must be some period for closing proceedings, but that in no stage of the Trial could the evidence now offered be admissible.

Mr. Fox and Mr. Angelo Taylor contended for its admissibility, and were most fully replied to by Mr. Law, Mr. Plumer, and Mr. Dallas. The latter Gentleman said *broadly*, that he believed Nobkissen was inclined to enter his bill *four years after the commencement of the Impeachment* (viz. in 1792), by the efforts of those who were friendly to the Impeachment; and he said that under no possible circumstances could the evidence be admitted.

Mr. Law and Mr. Plumer reproached the precedent of Lord Strafford's Trial,

trial, that it happened almost at the commencement of a rebellion, when the Court and the Judges were *panic-struck*, but that in better times, no such doctrines as were supported in 1642 would be admitted.

Mr. Burke began his reply, by complaining of the length of the speeches of the Counsel. He then proceeded, in the strongest language, to contend for the admissibility of the evidence that he had offered; that he was addressing a body of Nobles, who would act like

Nobles, and not as thieves in a night-cellar; that he could not suspect them of so foul a thing as to reject the evidence that he offered; that the law of parliament was distinct from the law of the land; that the Judges had no right to guide the Lords, and he trusted they would at all times follow the example of the Judges who were in office during the trial of Lord Strafford.—After much more, he closed at six o'clock, and the Lords adjourned*.

MON-

* On the Managers' return to the House of Commons Mr. Burke said, that during the late recess, the Managers for the Commons had discovered some inaccuracies in the Report which had been prepared and brought up by them, relative to the conduct of the Impeachment; and he therefore wished to move, that the order for printing that Report might be discharged, and that the Report might be recommitted to the same Committee.

Mr. Law opposed the Motion, which he contended would have a tendency to throw fresh delays in the way of a Trial already procrastinated to a most unreasonable length.

Mr. Cox and Mr. Robertson supported the observations of Mr. Law; and a desultory conversation between them on the one side, and Mr. Burke and the Chancellor of the Exchequer on the other, arose, when the House at last divided, and there appeared

For the Motion,	52
Against it,	20
Majority	—30

The Report was accordingly recommitted.

On the following day, Wednesday April 30, Earl Stanhope rose in the Upper Chamber of Parliament, and said, that it had been laid down as a principle, a principle which he hoped would ever remain indisputable, that the utmost respect should be paid to the Judges of the Land, as long as they did not deviate from the path prescribed by justice and integrity. It was thought severe in the case of the Judges of the Judiciary in Scotland, that any oblique blame should attach to them, or any allusion to corruption, until the business had been brought forward in a legal and constitutional manner. He was of opinion, that the Judges of this country should be protected against any improper aspersions, before even their guilt had been alleged. He was therefore surprized to hear, in a high court of justice yesterday, the assertion of a Right Hon. Manager, "that an arm of the Gangs had run into the Thames, and that it had poisoned its source; and that the course of justice could not be pure, where the *ipse dixit* of a Judge was to prevail." For the credit of the Judges, his Lordship said, the Noble Manager should be called upon to explain his words; if they were culpable, let them be punished; if innocent, there never was a period which called for their protection more than the present, when the different orders of society, it was repeatedly stated, were endangered by a contempt of all order and decency. As far as he could depend on his own memory, he said he believed that he had stated the words correctly; but as short-hand writers had been employed on this Trial, and if their Lordships should have occasion to call upon them to publish their notes, it also behooved them, in the present instance, to call them to the bar, and see if their short-hand characters corresponded with his assertions. For this purpose he would move, "That Messrs. Blanchard and Gurney, short-hand writers, employed on Mr. Hastings's Trial, should be directed to attend at the bar of the House, to read their minutes, that their Lordships may be informed of what was said by the Right Hon. Edmund Burke on the Trial, on Tuesday last, with respect to their Lordships the Judges."

Earl Carnarvon was surprized to hear a direct charge made against the Hon. Manager, when from his own knowledge and memory he could assert that the words were never spoken. The word, at all events were used argumentatively, and no agreeable to the acceptation in which they were taken by the Noble Lord. He conceived that the time to have noticed the expression was when spoken, and not at a distant period.

Lord Kenyon said, that he conceived the propriety of the Motion, though he was neither master of the form that should be used, neither did he know whether the words passed or not, but took them on the credit of his Lordship. He declared he had no communication with the

MONDAY, MAY 5.
ONE HUNDRED AND TWENTY-
EIGHTH DAY.

Lord Kenyon sat this day for the Chancellor, and the Court met before two o'clock, when his Lordship informed the Managers, that the evidence last offered was *inadmissible*. Mr. Burke, as usual, said the Commons submitted, though they did not acquiesce, and lamented the inconveniences, which the cause of the Commons sustained by the decision.

Mr. Burke then said, he had some important evidence to offer, which he was confident was open to no sort of objection, and it was necessary for him shortly to open the nature of it. He said, that Mr. Hastings in his defence had stated that the various sums of money which the Commons had in fact charged him with receiving, were really taken by him, and applied to the public service in times of great difficulty and distress, and he had given in a very great variety of evidence to prove the distressed state of the Company's affairs in the years 1779, 1780, 1781, 1782, and 1783. He had also given evidence to prove the great confederacy which was formed against the British empire in India at those periods, and he loudly boasted of having preserved the British empire entire in India, while her dominions were lost to her in America. Mr. Burke said, the Commons very readily admitted the distresses of the

Company to be as great as Mr. Hastings stated them to be; but it then became necessary, by way of rebutting the defence made by Mr. Hastings, *to go into the origin, progress, and termination of the Maratta War*, in order to prove that Mr. Hastings was *the author of that war* which produced the confederacy against us, and excited France to use her utmost efforts for overturning the British empire in India. He contended, that as the defence of Mr. Hastings was *new matter*, the Commons had a right to rebut it *by new matter*; and on this view they offered it, not stating the Maratta War to be *criminal*, but by proving that Mr. Hastings was the author of the distresses which were brought upon the Company *by that war*. He therefore *proposed* to begin with the proceedings of the Governor and Council of Bombay in 1775, and so to go through the series of measures pursued relative to the Marattas until 1783, [a body of documents that would *fill at the least seven folio volumes*, and which could not be gone through in *seven years*]. Mr. Fox supported Mr. Burke, but very feebly. No other Manager spoke.

Mr. Law, with great force, contended that in no possible shape could this evidence be produced—that there was no point which had been more disputed, than who was, or who was not, the author of the Maratta war. It was plain that the late House of Commons did not believe Mr. Hastings to be the

Noble Peer who brought forward the Motion. But the two Noble Lords who had spoken differed widely as to the expression, and he thought the House should avail itself of the means to see which was the most correct. If the Judges were guilty, let them be punished—it no charge lay, the Hon. Manager should explain himself on the business; but their characters should not be taken away by a side-wind, and he did not think that it was an object on which they could think with indifference.

Lord Loughborough observed, if the Noble Lord who had spoken last had been present, he would not have felt the perturbation which he seemed now to manifest. For though the introduction of a great deal of irrelevant and collateral matter foreign to the subject, prevented him from paying strict attention to the whole, still he was attentive to the substance, and nothing that he had heard should create the least uneasiness in the breasts of the Judges. If he had heard any thing to give them pain, they would not have wanted an advocate in him. God forbid, his Lordship said, that ever their Lordships should call on the short-hand writers to publish their notes, for of all people short-hand writers were ever the farthest from correctness, and there were no man's words they ever heard that they again returned. They were in general ignorant as acting mechanically, and by not considering the antecedent, and catching the sound, and not the sense, they perverted the sense of the speaker, and made him appear as ignorant as themselves. His Lordship conceived the proposition made by the Noble Earl unprecedented, and for the reasons he had stated, must give it his negative.

Earl Stanhope said, that one Noble Lord had opposed him, because he did not listen to the proceedings; but he stood supported by another, with whom he should have it recorded on the Journals, that they stood forward in support of the Judges.

The Motion was negatived without a division.

author

author of the war, because Mr. Burke had originally presented a charge, accusing Mr. Hastings as the author of it—that nothing was ever done upon that charge; Mr. Hastings boldly denied it, but claimed *all the merit* of restoring peace to India. How was the fact as applied to the evidence? The Managers had entered a letter from Mr. Hastings, in which he said that he left Calcutta in July 1781, impressed with a belief that strong measures were necessary to prevent the Company from sinking under the accumulated difficulties that surrounded them. The Managers had also entered a letter from Sir Eyre Coote, dated in September 1781, in order to prove that *at that time no State necessity existed*. To rebut this evidence, Mr. Law said, the Counsel had given a variety of evidence to prove the actual state of distress at Madras, Bombay, and Bengal, in 1780, and the subsequent years—and now the Managers meant to repel it, by going into the history of the rise, progress, and termination of the Maratta War, a proceeding which he was confident their Lordships would not entertain for a moment.

Mr. Burke replied at very great length, going over the same ground again.

Mr. Law, in reply, said it would be an insult to *their Lordships*, and *treachery* to Mr. Hastings, were he to waste a moment in further observations on what had been said by the Managers.

Mr. Burke upon this grew exceedingly angry; and said, that he rejoiced there were some persons amongst the audience of the day [the Turkish Ambassador and his suite were present], who did not understand English, as the proceedings in this case would be a disgrace to a Turkish court of justice—[or words very like it]. Lord Kenyon and several other Lords called to order.—Mr. Burke was visibly agitated, and qualified what he had said with an *if*.

The Bishop of Rochester repeated the words as he understood them—and that was, as a reflection upon the Court.

The short-hand writer was referred to; but Mr. Burke said, that Mr. Gurney could not read his own short-hand notes.

Lord Carnarvon got up and said, he did not conceive Mr. Burke meant to reflect upon the Court; and at last the Lords retired, to determine, whether it was competent to the Commons to go

on the origin, progress, and termination of the Maratta War, in order to prove that Mr. Hastings was the author of that war, and could not therefore plead the *distresses* and *dangers* of the Company as an excuse for receiving money privately, and carrying it to the public service, such difficulties being occasioned by that war, of which they charged Mr. Hastings to be the author.

TUESDAY, MAY 6.

ONE HUNDRED AND TWENTY-NINTH DAY.

Lord Kenyon (when the Court assembled on this day) informed the Managers, that the evidence they had offered could not be admitted. Our readers will recollect that this evidence did, in fact, comprise the *origin, progress, and termination* of the Maratta war, including in it a period of *eight years*, from 1775 to 1783, and filling at the least *six folio volumes of printed evidence*.

Mr. Burke observed, that as the Court did not state the grounds on which they rejected the evidence, the Commons were utterly at a loss to know why it was refused. Mr. Burke then said, that this complaint of delay had been *reboord from one end of the kingdom to the other*; that the Managers were *libelled*, their motives misrepresented; and he then asked, *what one reason under Heaven the Managers could have for wishing to protract this Trial*, in which they had now been engaged *above eight years*, and he himself an Indian enquirer *above fifteen years*; that those who were grown *old* naturally wished for *reposé*, and the *young* to enjoy the pleasures of youth. The prisoner was personally known to none of them; to *him they could have no enmity*—he interfered not in their *political pursuits*; it was therefore *impossible* for any man, with any degree of *justice*, to accuse them of *delay*.

Here Mr. Hastings started up, and said he did directly accuse the Managers of delay; that every word he was now uttering was irrelevant to the cause.

He was proceeding further, when Lord Kenyon desired Mr. Burke to proceed, and to go on with the evidence to which he supposed his remarks were preliminary.

Mr. Burke then took a newspaper (*The ORACLE*) from his pocket, and said, that the same complaints which

Mr. Hastings made, he had met with in a Paper of *this morning*. After stating much more to the same purpose, Mr. Burke proceeded to read the Paper, but was interrupted by Lord Kenyon, who said the Court could not receive any complaint unless the Manager was prepared to support it *by legal evidence*. That it was *not* the duty of the Court to take notice of any matters which were not brought regularly before them. That he knew nothing of any libels that had been published, none of them having come under his inspection.

Mr. Burke again proceeded to state, in very strong terms, the unwarrantable liberties taken with the Managers and the Court in the reflections cast upon them.

He was successively interrupted by Lord Carnarvon, Lord Thurlow, and Lord Somers, who entreated the Manager to proceed with his evidence.

Lord Thurlow said, that no complaint could be considered in the court, unless from some circumstance immediately occurring. That the Managers had it in their power to complain to the House of Commons, who might either proceed themselves, or by message to the Lords.

Lord Somers expressed his hope that the time of the Court would no longer be consumed by matter foreign to the cause: that the Lords would take care of their own privileges.

Mr. Burke then insisted that they were an integral part of the country, and he then read a long protest against the decisions of the Court, and denied that the Commons were to be looked upon as common prosecutors.

The Lords declined to receive the protest.

Mr. Burke strongly declared that the Commons were *not* the authors of the delay, and that it must rest with the Court or Mr. Hastings.

The Earl of Coventry said, that as the Manager had so fully proved that *He* was not the cause of delay, he trusted that he would *immediately* proceed to deliver in his evidence in reply.

This debate was ended about a quarter after three, when Mr. Fox and Mr. Taylor proceeded to deliver the evidence *in reply* in the Charge of *Pretexts and Contrasts*.

After Mr. Taylor had concluded his evidence in reply on the *Contract Charge*, it was supposed that the whole business was over, but Mr. Burke said

he had a *new bead of evidence* to go through—that Mr. Hastings had entered a variety of testimonials from all ranks of people in India, expressing their fullest approbation of his conduct, and the sincerest affection for his person—that these testimonials were transmitted by Lord Cornwallis to the Company; and while the Commons of Great Britain were prosecuting Mr. Hastings in the name of the people of India, for practising every species of oppression upon them, that very people were telling the Commons that they were ignorant, uninformed, and deceived; he proposed, therefore, to enter Mr. Barlow's report of the commerce of Benares, some letters from the Nabob Vizier and his Ministers, and some petitions from the Raja of Dinagapore and his Ministers.

To save time, the Counsel said they admitted them all.

The last documents not being ready, Lord Kenyon said, that the Court had no blame to lay upon the Managers, yet they did think their agents very reprehensible for not having the evidence at hand; and as it was understood all the evidence was to be closed on *this day*, the Court hoped there would be *no longer delay*, since it must be the wish of all parties to *close this long-depending Trial in this Session of Parliament*.

Mr. Burke seemed at one time inclined to give up, but, he said, the evidence he had to offer *was so important*, that he hoped he might give it on a future day: it would not take up above three quarters of an hour, and would not interfere with the Speech of the Manager who was to sum up the First Article.

At length the Books came, and Mr. Burke said, that one of the testimonials came from the Raja of Dinagapore and his Ministers. He, therefore, proposed to rebut it by giving in the report of Mr. Paterson on the cruelties supposed to have been exercised on some inhabitants of Rungpore and Edrachpore, in the years 1781 and 1782.

Mr. Law objected to this evidence as *utterly inadmissible*. He reminded the Lords, that this was a tale which he had pressed the Manager *yays ago* to bring forward *as a Charge*, in a shape in which it might be *answered*; the Manager declined to do so; and he trusted their Lordships would not admit *four folio volumes* on the Minutes, to which the Defendant *could not now reply*.

Mr,

Mr. Burke disclaimed every idea of bringing the matter forward in *this form as a criminal charge against Mr. Hastings*; but the Raja of Dinagapoc and his Ministers having stated the happiness every one enjoyed under the administration of Mr. Hastings, they meant to shew the miseries which the people sustained, and which induced Mr. Hastings himself to order an investigation of the conduct of Deby Sing in the year 1782.

Mr. Fox supported Mr. Burke.

Lord Stanhope, Lord Walsingham, and Lord Kenyon spoke, and it being clearly the sense of the Court that the evidence * was *inadmissible*, Mr. Burke at length gave it up.

The evidence being rejected, and the Managers declaring that they had totally closed their evidence, Mr. Law concluded the day by the following address to the Court:

"The evidence on the part of the prosecution being now fully closed, we might avail ourselves of your Lordships' indulgence in this stage of the proceedings, to observe at large upon the evidence adduced in reply during the course of the present Sessions of Parliament. But, my Lords, in pursuance of the same purpose which induced us in the last Sessions to forego a similar advantage, and to submit our evidence on one Article of Charge, the *Contracts*, to your Lordships' con-

sideration, unaccompanied by any preliminary or concluding comments whatever, and to demand the evidence on another Article, that of *Present*, unenforced by such concluding observations as in other circumstances we might have been disposed to offer:

"In pursuance of that same purpose of accumulation and dispatch which dictated our conduct in the instance I have alluded to, and with a view to the nearer and more immediate termination of this long-depending Trial, we again relinquish an advantage which can only be purchased at the intolerable price of further protraction and delay. All the attempts made in the present Sessions to support the case of the prosecution, have ended in producing an effect directly contrary. We confidently trust, that the strong and important conclusions in favour of the Defendant, which result from the invaluable oral testimony lately given at your Lordships' Bar, cannot either have escaped your Lordships' penetration, or fail to have their due effect hereafter upon your Lordships' judgment.

"After returning to your Lordships our humble but grateful acknowledgments for the invariable patience and condescension with which our zealous but imperfect endeavours to discharge our bounden duty towards our Client have been at all times honoured dur-

* As this story has been once more, and we believe now for the last time, alluded to, we owe it in justice to Mr. Hastings to call the attention of our Readers to it. In 1788, on the third day of Mr. Burke's first Speech, he introduced this story as applicable to the case of Mr. Hastings. He detailed a variety of horrid cruelties, supposed to have been committed by, or by the orders of, Deby Sing; and he said he would bring the charge home to Mr. Hastings. Lord Thurlow, who was then Lord Chancellor, said in the House of Lords, that the Charges preferred by the Commons sunk to utter insignificance, when compared with this matter introduced by Mr. Burke in his opening Speech.

In 1789, Mr. Hastings prayed the Commons to introduce this matter in the form of an Article, or to give him satisfaction for the injury he sustained.

The Commons did not comply with his request.

In 1790, the Managers offered to introduce this Report of Mr. Paterfor, in order to shew what cruelties might be committed without coming to the knowledge of an English Gentleman.

The Counsel rejected the evidence thus collaterally introduced; but said, that if preferred as a Charge, they were ready and eager to refute it. The Lords voted, that it was inadmissible.

In 1791, Mr. Hastings complained loudly of the injury he sustained by the introduction of so atrocious a calumny as this tale of Deby Sing was. Mr. Burke had it in his power at any time to lay before the Commons the grounds on which he imputed criminality to Mr. Hastings on this subject; but this he declined to do, and the whole tale has been buried in oblivion to this day, when Mr. Burke endeavoured to get it on the Minutes of the Trial,—not as a Charge against Mr. Hastings,—not with the hope of obtaining redress for the people of India, but in order to prove, that the testimonial transmitted by Lord Cornwallis from Dinagapoc, in 1789, could not be true, because great enormities which Mr. Hastings was most anxious to assert and to justify, were said to have been committed there in 1782.

"ing the course of so many years, it only remains for us, in the name and on the behalf of Mr. Hastings, to implore, that so much of continued time may be yet allotted to this Trial in the course of the present Session, as may be sufficient to bring it to an entire and ultimate conclusion. To that moment Mr. Hastings looks forward with impatient but fearful expectation, being, as he is, equally assured of his own innocence and your Lordships' justice."

THURSDAY, MAY 8.

ONE HUNDRED AND THIRTIETH DAY.

Mr. Grey on this day summed up, in part, the evidence *in reply* on the *Barnes* Article. Having mentioned that the Managers had finally closed their evidence, and pronounced a very short exordium, he said he should be as concise as possible in the remarks he should make on the nature of the first Charge of the Impachment, and the Defence made by the prisoner to the allegations therein contained. The Hon. Manager then entered into a detail of the services performed by Bulwant Syng in 1764 to the English Government in the East; and having read a letter from the Court of Directors to Mr. Hastings, in which those services were acknowledged, he thence deduced, that what Mr. Hastings's Counsel had alleged was not the real fact; that Bulwant Syng was not a *vassal* but a *great Zemindar*, and that he should not be treated as Mr. Hastings had treated him.

Mr. Grey dwelt for a considerable time on this circumstance, in order to prove, that the rights of Cheyt Syng were equal to those of his father, and held by the same tenures; and that Mr. Hastings was not, by any existing law, or by any power delegated to him, warranted to levy any money on those Zemindars, who were not subject to such demands.

After placing this in every strong point of view, he adverted to the Charge brought by the Counsel against the Managers, or more properly the House of Commons, of wilful misrepresentation; and made many comments upon the atrocity of that Charge. He contended that the Managers, in using the word *superiority* instead of *sovereignty*, had not that meaning which the Counsel meant to wrest from it, nor did it lead to any idea of equality, democracy, or the new rights of man. The

learned Counsel, he supposed, thought of throwing the apple of discord into the Managers' box; but he was mistaken in his ideas, for there was but one opinion there on the subject.

From these observations he proceeded to remark on the conduct of Mr. Francis, who was a man that had numerous enemies, but no accusers. He gave a high character of this gentleman, and said, that if his evidence had been admitted, it would clearly have proved, that he did not agree with Mr. Hastings, but that he opposed him.

The Hon. Gentleman next went into the evidence given by Mr. Markham, which, he said, should be attended to with caution, as he was the friend of Mr. Hastings; and then, taking a view of the Constitution of Hindostan, the conduct of Mr. Hastings on a supposition of the French war, and a variety of other matters, he seemed almost exhausted; when the Court adjourned to their own chamber, and sent a message to the Commons that they would further proceed on the following Monday. Mr. Grey spoke for three hours and a half. The subject was dry and uninteresting to the greatest part of the auditory.

Lord Thurlow sat for the Chancellor.

MONDAY, MAY 12.

ONE HUNDRED AND THIRTY-FIRST DAY.

The Court met on this day before half-past twelve o'clock, being very thinly attended, though the auditors were numerous, when Mr. Grey immediately proceeded to sum up the evidence *in reply* on the first Article. He began by repeating the substance of his last speech, and very fairly admitted that the point of *right* to demand assistance from Cheyt Sing in war, was the *main point* on which the innocence or guilt of Mr. Hastings *must turn*. He lamented that he could not be more *amusing*, but he said that the subject, though dry, was of the *most importance*.

Mr. Grey's speech, for the *first hour*, was chiefly a *denial of the consistency of Mr. Francis*, in which we say with deference that Mr. Grey *completely failed*—not that it is of the least consequence in the *decision of this cause*, for we fully subscribe to the justice of a remark made by Mr. Grey, that to fix on the House of Commons the justice of the *charge of inconsistency* is not un-
practising

peaching Mr. Francis, *would by no means exculpate Mr. Hastings.*

The plain and simple fact, stripped of oratory on both sides, is this—

That in July 1778, Mr. Hastings proposed to call upon Choyt Sing to maintain *three battalions of Sepoys during the war*, of which they had then received intelligence.

That Mr. Francis concurred in the demand, though he expressed doubts as to the right.

That Mr. Hastings most clearly expressed his opinion as to *that right*; the Company, as Sovereigns, not being precluded by any existing engagements from increasing the right inherent in all States, to call upon their subjects for extraordinary aids, in times of extraordinary emergency, and that Mr. Hastings expressly referred the question of right to be settled by the Court of Directors.

That on Choyt Sing demurring to pay the subsidy, Mr. Francis again expressed his doubts as to the right, and Mr. Hastings again expressed his clear conviction of the Company *possessing the right.*

In 1779, Mr. Hastings again proposed, that Choyt Sing should pay five lacks for that year, and that Mr. Francis concurred; but on Choyt Sing demurring, Mr. Francis again expressed his doubts as to the right, and his opinion that Choyt Sing *had not the ability.*

That in 1780, Mr. Hastings again proposed to call upon Choyt Sing for his subsidy. That Mr. Francis concurred; and on the usual delays being made, Mr. Francis also concurred in a proposition for marching troops to complete the payment; and in a proposition for exacting a fine of one lack of rupees for his continuance, the words of Mr. Francis were,—“I acquiesce, though I hope the threat will be sufficient.”

After going through these points, Mr. Grey came to a further demand of cavalry, which Choyt Sing was required to furnish. He admitted that Mr. Francis *did concur in this demand*; but he said, that finding opposition *ineffectual*, Mr. Francis was then *ready about to quit Bengal*, and did, in fact, embark for Europe the month after the demand was made. Mr. Grey, in the fullest manner, made that admission which the late House of Commons never would admit, namely, that the distress of the Company's affairs in November 1780, was to the full as great as the Council of Mr. Hastings had stated it to be.

Mr. Grey imputed to Mr. Hastings the demand of cavalry from Choyt Sing. The fact is as follows:

At the close of September 1780, the Supreme Council of Bengal received advice of the defeat of Col. Baillie in the Carnatic, the retreat of Sir Hector Munro to Madras, and the expectation of a French armament. In addition to this intelligence, 30,000 Maratta horse were on the borders of Bengal, near Midnapore, and another body of Marattas was expected to invade Bahar. In this perilous state, Mr. Hastings proposed to send ample assistance to the Carnatic, and he requested Sir Eyre Coote himself to take the command of the army on the coast. He also requested Sir Eyre Coote, prior to his departure, to give the Supreme Council his ideas of the best mode of defending Bengal against the dangers that surrounded it. Sir Eyre Coote did so, and he proposed, as one measure, to form a camp in Bahar, to be composed of certain battalions, and as many cavalry as could be procured from Choyt Sing. The Board (Mr. Francis concurring) requested Mr. Hastings to write to Choyt Sing for cavalry. Such is the origin of the demand for cavalry, which Mr. Hastings is charged with having made in order to harass, oppress, and ruin Choyt Sing.

After this, Mr. Grey came to the period of Mr. Hastings going to Benares, in July 1781; and here he made a pointed reference to the state of *home politics at this moment.* He said Mr. Hastings went to Benares, intending to exact five hundred thousand pounds from Choyt Sing, for his delinquencies, in aid of the Company's distresses. He reminded their Lordships, that this nation was engaged at this moment in a war of the utmost difficulty and danger—a war which had brought great distress upon the country; and they had the melancholy prospect of that distress increasing considerably before they should meet again to give their judgment on this important cause. Suppose one of his Majesty's Ministers was to propose, if Mr. Hastings should be convicted, that a large fine should be exacted from him, in order to ease the people of the burthens brought upon them by this necessary war. God forbid, said Mr. Grey, that such should be the law of this country. He wished their Lordships would reject so monstrous a doctrine. He said, he fully concurred

concurred with the Counsel, that if the *main and principal act* were proper in Mr. Hastings, he meant exacting a war-subsidy, and if Cheyt Sing had been guilty of the *contumacy* with which he was charged, then the proposed fine of five hundred thousand pounds *was not enormous*; on the contrary, the expul- sion of Cheyt Sing was a proper measure.

Mr. Grey, after commenting on the evidence, adverted to the remarks of the Counsel on the difference of opinion subsisting in the late House, as to the *points of criminality* in this Charge. He did not think it *quite decent* in the Counsel to allude to it, but since they had, he would notice it. It was perfectly true, that a Gentleman of great influence, and whose talents he admired, though he differed from him in politics, had given it as his clear and decided opinion, that Mr. Hastings *was warranted* in making the demands he did on Cheyt Sing—an opinion to which neither he (Mr. Grey) nor those who conducted this Impeachment could subscribe; but that Mr. Pitt thought it criminal to *intend to impose so large a fine upon him*. Mr. Grey, however, did not pursue this part of his argument to any conclusion.

Mr. Grey at the close contended, that if the Lords adopted the opinion of the Managers, Mr. Hastings would merit a severe punishment. If they adopted the opinion of Mr. Pitt, he would deserve some punishment, because, though *no fine* had in fact been imposed, it was clear Mr. Hastings *intended to impose one*. He ran cursorily over the remaining part of the observations of the Counsel, and made no remarks on Mr. Dallas's conclusion on the nature of *British justice*.

WEDNESDAY, MAY 14.

ONE HUNDRED AND THIRTY
SECOND DAY.

After the usual proclamation had been made, Mr. Sheridan rose to request the attention of their Lordships, while on the part of the Managers he replied to the evidence and arguments offered by the Counsel for Mr. Hastings in reply to the Begum Charge.

Mr. Sheridan introduced his observations on what fell from the Defendant's Counsel with a short exordium, in which he stated, that he should compress what he had to offer within a very narrow

compass indeed. He had read all the Speeches made by the Counsel with the most particular attention, and found it extremely difficult to discover even one point that went to set aside the evidence given by the Managers respecting the Begum Charge, it not being in the power of Counsel to controvert it.

He then alluded to the time consumed by those Counsel in displaying their oratory; sometimes in the indulgence of a *sixteen hours'* oration of extraneous matter, with which they had loaded their arguments; and sometimes with figurative lamentations at the metaphors used by the Managers. The first day had, he said, been occupied by the learned Counsel in relating a very pleasant story of one Sadut. He went over the narrative, and, with such a ludicrous power as defied gravity, sketched the indignant emotions of two old men, whose beards had been spit upon, determining to escape the insult by death; but mutually distrustful of each other's firmness, they appointed a spy upon the poison bowl, and were in consequence both detected in the indiscreet bravado. At length, however, shame at detected trick was more potent than at inflicted scorn, and they finished in earnest what they had begun in jest.

How this sensible occupation of one whole day could apply to the case in point the Hon. Manager was at a loss to imagine. Indeed he was considerably at a loss to discover when the learned Counsel were serious and when they were in jest. They had, for instance, with their usual happy facetiousness, taken hold of an expression used by him on a former occasion, and of which if he had anticipated their use, he should certainly have forborne to trouble their Lordships with the sentence:—he had said, the treasures in the *Zenana* of the Begums "were an offering laid by the hand of Piety upon the altar of a Saint;" the learned Counsel had scouted this unfortunate allusion, and asked triumphantly how the lady was to be considered as a Saint, and how the camels, part of the treasures, were to be laid upon the altar. Mr. Sheridan said, it was the first time in his life that he ever heard of *special pleading* as a metaphor, or a bill of indictment against a trope. But such was the turn of the learned Counsel's mind, that when he attempted to be humorous, no jest could be found; and when serious, no fact was visible.

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He insisted, that all the Mahometan laws were misquoted and misinterpreted by the learned Gentlemen; and that not one syllable of evidence had been adduced to prove what the extent of the Begum treasures were.

He accused Counsel of taking up two days to invalidate the treaty of 1785, although in the end they admitted the existence of that treaty, by allowing that it had the most sacred kind of force.

He then came to what he called a very serious part indeed, an attack made by Mr. Law on his (Mr. Sheridan's) character; wherein that learned Counsel had accused him of *judicial legerdemain* in the examination of Mr. Middleton, of which charge he should indeed be ashamed, if he was not able to clear himself. The question to which the learned Counsel alluded was not asked by him, but by the late Earl Camden, and he (Mr. Sheridan) set Earl Camden right. The charge, therefore, was founded, not on the conduct of the Manager, but upon a complete scandalous blunder of the very learned Counsel himself. It was no easy matter to disconcert Mr. Middleton; for his evidence throughout might be called prevarication personified, for which that immaculate witness deserved to be committed, who knew nothing, who remembered nothing, and than whose *memory* nothing was more *memorable*. What! confound and confuse the *mind* of Mr. Middleton! The idea was ridiculous; and when Counsel urged that as a charge against Managers, they surely forgot themselves—they were infected with Mr. Middleton's memory.

The learned Counsel ought to have known the difference of situation in which the Managers stood, from that in which Mr. Hastings's Counsel were. The Managers were to accuse, and endeavour to convict, if they found cause in the process to believe the Defendant guilty; but if any thing arose to give them an idea of his innocence, they were immediately to make it known to the Commons, that the proceedings might be arrested, and the business finish.

Far otherwise was it with the learned Counsel. Their duty was to have their Client acquitted, whether innocent or guilty. They were to take every advantage of a flaw in the indictment, of the contradiction of a witness, &c. for such was the lenity of the merciful law

PART VII.

of our excellent Constitution, that a defendant was always to be considered innocent until he was found guilty. Counsel were warranted to use every chicane; but the strict line of RECTITUDE was that marked out for the Managers, and they must rigidly pursue it.

The Counsel, in some respects, had an idea of this, and therefore they proceeded with what they deemed great caution; but in others they lost sight of what they owed to the Commons. Indeed, when they brought facts, they produced documents to prove they were right, and always had some authority to refer to; nor did he doubt, if they had found it necessary to assert that *two* and *two* made *four*, they would quote *Cocker's Arithmetic* to support the allegation. The Hon. Manager was extremely severe on Mr. Law.

He then came to what he called the conspiracy of Mr. Hastings, Colonel Hannay, Sir Elijah Impey, and others, against the Begums, for the purpose of plundering them of their property; to prove which, he said, there was no necessity of other testimony than referring to the Private Correspondence, which had in a manner turned king's evidence against its own corruption. This was what no ingenuity could get over—what set all the learned Counsel at defiance. Mr. Hastings's own Letters convicted him beyond the power of acquittal.

Upon the passionate exclamations of the Begum, on which stress of her disaffection had been laid, the eloquent Manager commented with exquisite pathos. He stated her provocations *patience*, her injuries too repeated for *forbearance*,—and from, not her enemies by profession, but, in the application of a passage from Scripture, the equals of endearing intimacy, the brothers in whom she had confided.

"WOMAN," exclaimed the Manager, "is by nature, perhaps, a PASSIONATE ANIMAL." [*A loud approbation.*] "I do not say that it is a moral obligation to be a SCOLD." [*An approbation louder still.*] "But less condemned than MEN to accident and violence, she must be left apt to cope with it, when it comes, either with the patience that can be perfect only through suffering, or with that active fortitude which, strengthening while it struggles, sometimes learns at last to check afflicting fortune, to encour-

Q

"ter,

“ter, to overcome it! While with Wo-
 “man all is passive as to her powers and
 “resources! Her weapons are words—
 “her assaults are in her ferrows!—What
 “strength she has is from weakness; her
 “best security is from fear! She eludes
 “sometimes, by thinking, the calamity
 “not otherwise to be escaped! But when
 “all fails, when bruited and broken,
 “though in spite of bending before the
 “storm, she then is not to be bereft of
 “the last sad consolation, the cry of na-
 “ture, the tears that overflow from an-
 “guish, the groans and exclamations
 “which lighten the overloaded heart!—
 “It was *not* an OPEN ENEMY that had
 “done me this dishonour; for then I
 “could have borne it!—Neither was it
 “AINE ADVERSARY that did magnify
 “himself against me; for then, perad-
 “venture, I would have hid myself from
 “him. BUT—it was even THOU, my
 “companion, my guide, mine own fa-
 “miliar friend—we took sweet counsel
 “together.”

In conclusion, Mr. Sheridan said, that the Counsel had endeavoured to deter their Lordships from finding a verdict against Mr. Hastings, by stating, that the six hundred thousand pounds had been taken by him from the Begum for the public service at a moment of great public exigency; that it had all been employed in the public service; and that the Nation, knowing of the transaction a few months after it had taken place, had full opportunity of redressing the wrong nearly twelve years ago; that it was impossible to vote that Mr. Hastings had acted wrong, unless they were prepared to do full and complete justice to those who had been injured.

Mr. Sheridan said, he joined issue with the Counsel; he fully concurred with them: but such was his idea of the justice of their Lordships, that he was convinced they *never* would be deterred from doing justice from a dread of the consequences. Economical as the House of Commons was, he never could believe that they would deny justice to the People of India, because justice could not be done to them without calling upon the People of England for a very heavy payment. For his own part, convinced as he was that on *this* Article Mr. Hastings was guilty of having taken from the Begum a large sum of money for the Public, on a charge of rebellion which was ill founded, he was ready to avow, that it would be impossible to declare Mr. Hastings guilty without

giving to the Begum complete restitution of all that had been taken from her, principal and interest. It was stated to amount to two millions sterling.

The Counsel had assumed, that the Benares Charge also was totally disproved; but they argued in the same manner, that if it were *not disproved*, the Nation was bound to restore Cheyt Sing, to call him from his present miserable situation; whether in a Mahratta or a Mysore camp, to pay back to him the millions which had been brought into the Exchequer by his expulsion, and to place him precisely in the state in which he stood when he was driven from Benares thirteen years ago. He would go further—every person *injured* by the acts of Mr. Hastings had a right to full retribution, or there was no justice in the prosecution of the Commissions; but he hoped their Lordships would not be deterred from their duty by such considerations. The Commons were not prosecuting for personal purposes. No: It was to do justice to India; and to suppose that if it should appear the People of India were injured, this Nation would merely stop at condemning the man who had injured them, while the Nation received the advantages arising from his injustice, was a libel upon the Country.

Mr. Sheridan trusted that *Mammon* would never be the Deity of that House, but that to the temptation held out by the *learned* Counsel they would reply in the language of Sir Guyon, in the *Romanes*,

“Mammon, said he, thy godhead’s vaunt
 is vain,

And idle offers of thy golden fee;
 To them that covet such high-glutting
 gain

Proffer thy gifts, and fitter servants en-
 tertain.

Another bliss before mine eyes I place,
 Another happiness, another end:

And to be lord of those that riches have,
 Than them to have myself, and be their
 servile slave.”

FÆRY QU. b. 2. c. 7.

Here he stopped, saying, if he had treated the subject in any part of it rather lightly, it was because nothing that he had heard or read against him deserved a serious answer. He was just to the merits of Mr. Dallas and Mr. Plumer, but said that vigour might be crippled into weakness by the cause it had.

had to carry; and that there could be but little fame in the *Arena*, by throwing an antagonist who was forced to come on crutches.

TUESDAY, MAY 20.

ONE HUNDRED AND THIRTY-THIRD DAY.

Mr. Fox began soon after one, by stating that it was his duty, however harsh it might be, to enforce, in the last stage of it, that Charge which he had summed up many years ago. He proceeded to divide the subject of Presents into two periods; the first, the sums alleged to have been received in 1772.

Mr. Fox, in considering this subject, said, that when Mr. Hastings removed Mahomed Reza Cawn, in 1772, by order of the Court of Directors, the Charge of the Commons was, that Mr. Hastings had virtually appointed Munny Begum to the office which Mahomed Reza Cawn had held.

Mr. Dallas had contended, that Mr. Hastings had done no such thing: on the contrary, Mr. Hastings had totally abolished the office which Mahomed Reza Cawn held; that he had taken upon himself and his Council the entire management of the revenues which Mahomed Reza Cawn had controlled; and that, in fact and truth, Munny Begum had no power, except in the household of the Nabob.

Mr. Fox then said, that Munny Begum was the Stepmother of the Nabob, and therefore not so proper for the guardian-

ship as the Nabob's Mother. Mr. Fox, in this part of his argument, totally abandoned the assertion of the Commons, which was, in fact, that the Government of Bengal was delivered up to Munny Begum by Mr. Hastings.

After a long argument, Mr. Fox came to the *real point* of the Charge, which was, that Mr. Hastings made the appointment for *money*: Mr. Hastings admitted, that one lack and a half of rupees had been received for entertainment, but which the Manager contended was a *bribe*.

Mr. Fox spent a considerable time in going into presumptions as to the other sums charged to have been received; but at last the whole turned upon this sum of one and a half lack of rupees, which Mr. Hastings confessed to have received, and which he never did deny having received*.

Mr. Fox argued the presumption of Mr. Hastings having been guilty, because upon the death of General Claveing and Colonel Monson he re-appointed Munny Begum to that office, from which that Gentleman and Mr. Francis had removed her. He recapitulated his argument, and proved very fully, that while Mr. Hastings was at Moorshedabad, in 1772, he had received from the treasury of the Nizam 2000 rupees a day for entertainment, in the same manner that Lord Clive and Mr. Verelst had done. Of the *Bribes* there was no proof; and they rest upon certain Papers which were submitted to the inspection of the Company's Lawyers in 1776, who pronounced upon them that *the Charges could not be true*.

* Most fortunately for the honour of Mr. Hastings, and for the cause of justice, Mr. Fox had the candour to bring forward a decisive piece of evidence in reply, which Mr. Hastings's Counsel had most anxiously wished to produce, but it was not discovered while the Defence was depending.

Mr. Fox called Mr. Wright, the Auditor of India Accounts, and asked him:

Q. From the time of Mr. Jaffier to the accession of Mr. Hastings, do there appear any allowances for the expences of an English Governor on the accounts of the Company?

A. Not on the account of the Company. The book I have before me is called the Treasury Accounts with the Nizams; that is, an entry in the Belah Establishment for the month of Suffa Sur, seventh of the reign, under the head of Musta Prucka, Paid charges of entertaining Lord Clive 23,000 rupees. For the month of Suffa Sur, eighth of the reign, By the Hon. Harry Verelst paid him for his daily charges 2000 rupees a day, 96,000 rupees. These are all the entries prior to the accession of Mr. Hastings, for the expences of that kind.

Here, then, is proof positive that Mr. Hastings did precisely what Mr. Verelst (described by Mr. Burke as one of the honestest men in the world) and Lord Clive had done before him. As long as Mr. Hastings was at Moorshedabad in 1772, he received, as Mr. Verelst had done in 1769, 2000 rupees a-day, agreeably to *annual practice*. It is self-evident, therefore, that whether Mr. Hastings had appointed Munny Begum, or the Nabob's Mother, or any other person, to be guardian of the Nabob, *he would equally have received 2000 rupees a-day as long as he remained at Moorshedabad*. It could not, therefore, be a *bribe* for an appointment to office.

Having concluded this part of his case, Mr. Fox said he should now come to those presents which Mr. Hastings had received subsequent to the Act of Parliament, the receipt of which he publicly avowed, as well as his application of them to the public service. He contended, that to receive presents after the Act of 1773, was against law, and that Mr. Hastings must of course be found guilty, though he received them with the purest intentions; but that he should proceed to state the circumstances under which they had been taken, and the presumption that parts of them at least were intended, at the time they were taken, to increase the private fortune of Mr. Hastings, though he afterwards changed that intention.

As this was a subject of some length, if it was agreeable to their Lordships, he would break off here.

As the Court was rising, Mr. Hastings most earnestly implored the Lords to consider the state of the Session—that much time had lately been lost, owing to the indisposition of the Managers, and he deputed the adjournment to another year: that the illness of one Gentleman, Mr. Grey, was apparent; and another Hon. Manager had applied, as he understood, to postpone the Trial, on account of indisposition, from Friday last to another day, though he had afterwards seen the Hon. Manager in the Park on horseback: that he had been often ill during the Trial, and twice rose from his bed in a very high fever to attend in the Hall.

He prayed, therefore, that the Lords would go on so as to finish in this year; and then he did not care how many days they sat.

Mr. Fox said, that in the situation of the Gentleman at the Bar, he could well excuse any warmth of expression from him:—that it was true, he had written to the Noble Lord [Lord KENYON] who presided in the absence of the Chancellor, and said, that though he was ready to go on (as Friday last), yet if it would not occasion any material delay, he wished to postpone it, as he was indisposed: that it was true he did ride out, which might be rather imprudent for a person indisposed as he was; but that, unless indisposed, he would not have expressed a distant wish for an alteration of the day.

Mr. Burke instantly rose, and said that Mr. Hastings was perpetually complaining; but that if he held one end of the chain, the Managers held the other; that while they were serving in this cause for nothing, the Criminal had ninety thou-

sand pounds of Nobbiksen's money in his pocket.

The Court immediately rose.

WEDNESDAY, MAY 21.

ONE HUNDRED AND THIRTY-FOURTH DAY.

Mr. Fox proceeded to animadvert on the Defence read by Mr. Hastings to the House of Lords in 1791. He said, that Mr. Hastings, in that Defence, had declared, that if he had mistaken the Act, every man with whom he had conversed or corresponded, had been in a similar error. Mr. Fox lamented that the Council could not answer him, but he challenged the whole world to dispute his statement.

The assertion of Mr. Hastings was, that though the Governor General was precluded by law from receiving presents for his own use and benefit, he might receive presents for the Company. In proof that this assertion was not true, Mr. Fox read two Minutes from General Clavering and Mr. Francis, dated the 23d of October 1774, in which they positively declared, that the fair construction of the Act was, that no present whatever, on any account, could be received; that they had themselves been guided accordingly; and that they had actually refused presents, on any account, either for themselves or the Company. "How then," said Mr. Fox, "can Mr. Hastings dare to say, that all the Servants of the Company miscontrived the Act in the manner he pretended to do?"

General Clavering and Mr. Francis agreed to receive the Rohilla prize-money as a deposit for the Company, and to be disposed of hereafter as the Company chose. This was a present to the Army; and in 1784, in Mr. Pitt's administration, that money was given to the Army.—When General Clavering sat in the Chair, in the absence of Mr. Hastings, he received a nuzzer from the Zemindar of Buidwan, and sent it to the Treasury.

Having stated that Mr. Hastings must be convicted for receiving presents against law, it being a crime to receive presents, even though they were applied to the public service, he entered into a very long and ingenious train of reasoning, in order to shew the presumption to be, that when Mr. Hastings received these several sums, or at least a part of them, he did really intend to apply them to his own use.

With respect to the Defence offered by Mr. Hastings's Counsel, in which (Mr. Laing

Larkins not being then in England) great stress was laid by them, that he, Mr. L. knew every transaction relative to Mr. Hastings's concerns, and that it was not likely he would be employed as a confidant, being high in the East India Company's service, if the transactions were corrupt; Mr. Fox observed, that this presumption was the principal part of the defence offered by the Counsel; and Mr. Hastings, in all his different statements, had asserted, that Mr. Larkins was regularly acquainted with every transaction. But when Mr. L. came to be examined upon oath, he said he knew nothing of these different matters until May 1782, long after they had passed, and only when a discovery of them was likely to become public. Mr. Fox observed, *that whenever Mr. Hastings had expressed his belief of any thing, it had turned out erroneous; but whenever he made a positive assertion, it was always just.*

In observing upon Mr. Larkins's evidence, Mr. Fox said, their Lordships must

have observed a peculiar mode of speaking and of giving evidence used by those Gentlemen who had been in India; so much so, that in a short time he doubted not but we should have a complete Indian dialect. Many of their Lordships knew, that in the Greek Language there were several dialects, among which the Doric, in particular, delighted in simplicity, and was generally used in the Indicative Mood: but the pastoral simplicity of such a dialect by no means suited those Gentlemen who had learned their refinement in the East: they preferred the Optative and Potential Modes, *I may, I might, I should*; but cautiously avoided the open frankness of the Indicative, *I did, or I did not.*

Every thing that genius and ingenuity could do, was done by Mr. Fox, in order to convince the Lords that Mr. Hastings did intend at one time to apply part of these presents to his own use*.

FRI.

* In a debate which took place in the House of Peers, on Thursday May 22, on the Bill for allowing Government to take up and confine for a limited time persons suspected of treasonable or seditious practices, Lord Thurlow in his Speech mentioned "a pamphlet† which his Lordship said was published by one Debrett in Piccadilly, and which had that day been put into his hands, reflecting highly upon the Judges and many Members of that House: it was disgraceful and indecent; such as he thought never ought to pass unpunished. He considered that vilifying and misrepresenting the conduct of Judges and Magistrates entrusted with the administration of justice and the laws of the Country, *was a crime* of a very heinous nature, most destructive in its consequences, because it tended to lower them in the opinion of those who ought to feel a proper reverence and respect for their high and important stations; and when it was stated to the ignorant and the wicked, that their Judges and Magistrates were ignorant and corrupt, it tended to lessen their respect for, and obedience to, the laws of the Country, because they were taught to think ill of those who administered them."

The next day (May 23), Mr. Burke called the attention of the House of Commons to the above circumstance in the following Speech:

"The licence of the present times makes it very difficult to talk upon certain subjects in which Parliamentary Order is involved. It is difficult to speak of them with regularity, or to be silent with dignity or wisdom. All our proceedings have been constantly published, according to the discretion and ability of individuals, with impunity, almost ever since I came into Parliament. By prescription people had obtained something like a right to this abuse. I do not justify it. The abuse is now grown so inveterate, that to punish it without a previous notice, would have an appearance of harshness, if not injustice. These publications are frequently erroneous as well as irregular, but not always so: what they give as Reports and Resolutions of this House, have sometimes been fairly given.

"It has not been uncommon to attack the proceedings of the House itself, under colour of attacking these irregular publications; and the House, notwithstanding this colourable plea, has, in some instances, proceeded to punish the persons who have thus insulted it. When a complaint is made of a piratical edition of a work, the author admits that it is his work that is thus piratically published; and whoever attacks the work itself in these unauthorised publications, does not attack it less than if he had attacked it in an edition authorised by the writer.

"I understand, that in a Place which I greatly respect, and by a Person for whom I have likewise great respect, a pamphlet published by a Mr. Debrett has been very heavily cen-

† The Report of Committee of the Managers of the House of Commons appointed to "inspect the Lords' Journals, &c. [See the SUPPLEMENT annexed to this TRIAL.]

fured.

FRIDAY, MAY 23.

ONE HUNDRED AND THIRTY-FIFTH DAY.

Mr. Taylor commenced his observations upon the Charges relative to the Contracts. At six the Honourable Manager informed the Court, that he should require, at least, an hour longer to perform his duty; upon which the House adjourned

to the Upper Chamber, and deferred the further proceedings to

TUESDAY, MAY 27.

ONE HUNDRED AND THIRTY-SIXTH DAY.

Mr. Taylor, in a Speech of two hours length, completed the Charges respecting

sure. That pamphlet, I hear (for I have not read it), purports to be a Report made by one of your Committees to this House. It has been censured (as I am told, by the Person and in the Place I have mentioned, in very harsh and very unqualified terms. It has been said, and so far very truly, that at all times, and particularly at this time, it is necessary for the preservation of order and the execution of the law, that the characters and reputation of the Judges of the Courts in Westminster Hall should be kept in the highest degree of respect and reverence; and that in this pamphlet, described by the name of *A Libel*, the characters and conduct of these Judges upon a late occasion had been aspersed, as arising from ignorance or corruption.

"I think it impossible, combining all the circumstances, not to suppose that this speech does not reflect upon a Report which, by an order of the Committee on which I served, I had the honour of presenting to this House. For any thing improper in that Report I am responsible, as well as the other Members of the Committee, to this House, and to this House only. The matters contained in it, and the observations upon them, are submitted to the wisdom of the House, that it may act upon both in the time and manner that to your judgment may seem most expedient, or that you may not act upon them at all, if you should think it most useful to the public good. Your Committee has obeyed your orders; it has done its duty in making that Report. I am of opinion with the eminent Person by whom that Report is censured, that it is necessary, at this time very particularly, to preserve the authority of the Judges. This, however, does not depend upon us, but upon themselves. It is necessary to preserve the dignity and respect of all the constitutional authorities. This, too, depends upon our lives. It is necessary to preserve the respect due to the House of Lords: it is just as necessary to preserve the respect due to the House of Commons; upon which (whatever may be thought of us by some persons) the weight and force of all other authorities within this Kingdom essentially depend. If the power of the House of Commons is degraded or enervated, no other can stand. We must be true to ourselves; we ought to admonish upon any of our Members who abuse the trust we place in them; we must support those who, without regard to consequences, persevere in their duty.

"For your Committee of Managers, and for myself, I must say, that the Report was deliberately made, and does not, as I conceive, contain any very material error, nor any undue or indecent reflection upon any person. It does not accuse the Judges of ignorance or corruption. Whatever it says, it does not say calumniously. This kind of language belongs to persons whose eloquence entitles them to a free use of epithets. The Report states, that the Judges had given their opinions *secretly*, contrary to the almost uninterrupted tenor of Parliamentary usage on such occasions. It states, that the opinions were given, not upon the *Law*, but upon the *Case*. It states, that the mode of giving the opinions were *unprecedented, and contrary to the privileges of the House of Commons*. It states, that the Committee did not know *upon what rules and principles the Judges had decided upon those cases*, as they neither heard them, nor are they entered upon the Journals. It is very true, that we were and are extremely dissatisfied with these opinions, and the consequent determinations of the Lords; and we do not think such a mode of proceeding at all justified by the most numerous and the best precedents. None of these sentiments are the Committee's, as I conceive (and I tell as little as any of them), disposed to retract or to soften in the smallest degree.

"The Report speaks for itself. *We never on occasion shall be regularly given to maintain every thing of substance in that Paper, I shall be ready to meet the proud name for allying, learning, or rank, that this Kingdom contains, upon that subject.* Do I say this from any confidence in myself? Far from it! It is from my confidence in our cause, and in the ability, the learning, and the constitutional principles, which this House contains within itself, and which, I hope, it will ever contain; and in the assistance which it will not fail to afford to those who, with good intention, do their best to maintain the essential Privileges of the House, the ancient Law of Parliament, and the public Justice of the Kingdom."

No reply or observation was made on the subject by any other Member.

the

the Contracts. He particularly dwelt upon those given by Mr. Hastings to Sir Eyre Coote and Mr. Auriol, which he held to be in direct contradiction to the Act of Parliament, and the express orders of the Court of Directors.—In the conclusion, he recapitulated the loss to the Company as follows:

Mr. Benn's opium contract,	£. 76,000
Mr. Sullivan, -	46,000
Mr. Young, -	22,000
Sir Eyre Coote's bullock contract, -	260,000
Loss to the Vizier on ditto,	83,000
Mr. Auriol's contract for rice, &c. (allowing him a fair profit of five per cent.)	33,000
Mr. Belli, (allowing twenty per cent.)	34,000
Total,	554,000

Mr. Taylor made an *admirable* close. He read, with great emphasis, and wonderfully well, a part of Mr. Hastings's speech in the Lords in 1791, in which, turning to the House of Commons, he said, with strong marks of indignation in his countenance—

“To the Commons of England, in whose name I am arraigned for despoiling the provinces of their dominion of India, I dare to reply, that they are, and their Representatives annually persist in telling them so, the most flourishing of all the States of India—it was I made them so.

“*I gave them all, and you have rewarded me with confiscation, disgrace, and a life of impeachment.*”

Mr. Taylor affirmed that on this eloquent passage Mr. Hastings had very unjustly attacked the Commons; but, *unfortunately*, Mr. Taylor omitted to prove that the attack was unjust—that is to say, he did not attempt to disprove any one assertion of Mr. Hastings; and, *therefore*, the mere declaring that the charge preferred by Mr. Hastings against the Commons is *unjust*, leaves the matter just as it was *before Mr. Taylor spoke*.

Mr. Taylor, after bringing his speech to a conclusion, called upon their Lordships' principles and feelings, on which he said he had the most firm reliance, to decide in such a manner as would satisfy their own conscience, and best answer the ends of substantial justice.

The Court adjourned at five, and ordered the Trial to proceed again the next day.

WEDNESDAY, MAY 28 TO MONDAY
JUNE 16*.

ONE HUNDRED AND THIRTY-
SEVENTH DAY, &c.

At half past one o'clock their Lordships entered the Hall, when

Mr. Burke proceeded to make the final reply on the part of the Commons. He said, that this great and important business, which had so long engaged the attention of the first Councils of the Nation, was drawing to a close. When he considered how near the period was when their Lordships would be called upon to pronounce their Judgment in this Case—when he considered in how great a degree the honour of the Commons of Great-Britain depended upon the conviction of the Prisoner at the Bar, he could not think of the event of this long-protracted Trial without trembling. One of the Counsel for the Defendant had stated to their Lordships, that the Commons had only brought Mr. Hastings before that Court to clear up some doubtful points, and that they (the Managers) must feel themselves happy if he should be able to establish his innocence before the world.—Such an idea he begged in the most pointed manner to disown. The Commons of Great-Britain did not come there to solve a problem: they came there to convict Guilt, and to assist the cause of Justice. The accusation of Mr. Hastings was not adopted by the Commons in a hurry: it was not done in compliance with popular clamour, by which sometimes even the gravest and most cautious popular assemblies may be swayed; but it was the result of long and laborious inquiry, of minute and accurate investigation.—Therefore, to acquit the Prisoner, would be to convict the Commons of England of deliberate systematic error.—Before the Commons brought this Impeachment to the Bar of the House of Lords, they had spent years in the examination of every paper, every document which could throw light upon this subject. In the year 1782, a string of Resolutions were proposed to the House of Commons by the then Lord Advocate of Scotland, now one of His Majesty's Principal Secretaries of State: those Resolutions, arraigning the conduct of the Defendant, were agreed to by the House; they were then referred to a Committee, and the Report of that Committee corresponded with the former determination of the House.—

* Mr. Burke continued his Speech nine days, viz. on May 28, 30, June 3, 5, 7, 11, 12, 14, and 16; and which, for the sake of giving it with the greater perspicuity, we have thrown into one uninterrupted connected narrative.

Not content with this, by an unparalleled instance of caution and circumspection, the matter was referred to another Committee, who made a Report of a similar tendency. When, after such an investigation, the House of Commons felt itself bound, in order to vindicate the honour of the British name in India, solemnly to accuse Mr. Hastings, he surely did not go too far in saying, that the dignity, the character, nay, perhaps, the very existence of this branch of the Legislature would depend on his conviction.—He therefore begged to disclaim that false candour imputed to him by the Council, and to say, that it (he could hardly bring his heart to think of or venture to express the idea)—if their ships should feel themselves justified in acquitting Hastings—if it should appeal to them, that instead of prosecuting a great delinquent, the Commons had been prosecuting not only an innocent but a meritorious man, then he and his Fellow-Managers would retire from the Bar covered with shame and confusion: But when he considered the evidence brought by the prisoner in answer to the Charges brought by the Commons, he could not help looking upon such an acquittal as impossible.

It would now be necessary for him to state to their Lordships the state of the Prosecution. The Commons had, out of an immense mass of criminality, selected a quantity of matter, which they arranged into twenty Articles of Accusation against the Prisoner. In making this selection, he was not sure that they had not left behind a multitude of facts of equal atrocity with those they had brought forward.—But the Managers foreseeing the probable length of the Trial, and anxious to do every thing in their power to shorten it, without injuring the cause of Justice, went to their Constituents, and asked leave to make such a further compression as they thought would tend to obtain that object; in consequence of which the Charges were reduced to four; the two first, viz. the Benares and the Begum Charges, tending to shew the violence and tyranny of the Defendant; and the other two calculated to display his insatiable avarice and corruption, and the scandalous means he used to obtain his purpose, and to conceal his crime.—It was not his intention to trouble their Lordships with any observations upon those Charges which had been spoken to with such infinite abilities by his Brother Managers; of those abilities he could say no more than that they were equal to the task—more he could not say of them. Indeed, the consideration of the

great talents requisite to explain and enforce such an important subject, would have deterred him from standing forward in this business; but he had a duty paramount to any feelings of his own, viz. his duty to the House of Commons, who had commanded him to undertake the office.—The House of Commons thought, perhaps, that industry would make up for the want of abilities, and therefore appointed him a Manager.—Avoiding, therefore, every thing which had already been discussed, he should confine his observations to four points, viz. the demeanour of the Prisoner at the Bar during the course of this Trial—the principles which he had laid down, and upon which he founded his justification—the means by which his defence had been supported, and the testimonies which had been brought forward in support of those means.

With respect to the first of those four points, viz. the demeanour of the Prisoner during the course of the Trial, he thought it afforded ground of the most serious observation. It was such a conduct as he was sure had never been held by any person standing in the same awful predicament with the prisoner: it was not the boldness of conscious innocence, but the insolence of hardened guilt. He wished their Lordships to examine the conduct of every person who had stood in peached before them, and to compare it with that of the Prisoner—from that of the Duke of Suffolk, Lord Bacon, Lord Macclesfield, down to the Smugglers who were impeached in the Reign of William III. and they would find that such insolent and daring demeanour had never before been displayed. Their Lordships would recollect the name of Lord Verulam.—In knowledge, to speak of every thing the most profound—in learning, of every thing the most various and extensive—in discovery, of every thing the most enlightened and the most penetrating, was to mention Lord Verulam. This man, whose least distinction was, that he was a Peer, a Chancellor, and the son of a Chief Justice—this great man was not exempt from frailty. The Commons discovered some spots in this sun, and impeached him: how did he conduct himself? With humility, with a consciousness of his situation, with contrition; notwithstanding which, the Court fined him 40,000l.—a sum equal to 100,000l. at the present day. It was not his wish that the Defendant should be abject, should be mean; he only wished him to conduct himself, with decorum to the Court who tried him, and to the Body who prosecuted him.—But instead of this, instead of attempting

tempting to refute the Charges brought against him, his whole Defence consisted of recriminatory accusations against the Commons, and of testimony to his character.—The charge which he made against the Managers for the Commons was, that they had used the most harsh and violent language against him.—In answer to this he would say, that the Managers came there to maintain the cause of Truth and were therefore obliged to use the language of Truth. The language of the Commons of Great-Britain was rustic, but intelligible: they had not learnt the refinement of Indian corruption.—The Managers were accused of using language to Mr. Hastings as gross as that applied to Sir Walter Raleigh. Sir Walter Raleigh was a man of learning, a great Soldier, and great Mariner: to apply the epithet of “a Spider of Hell” to him was absurd, and well suited to the pedantic eloquence of the man who used it. But if Sir Walter Raleigh had been guilty of corruption, of speculation, of the most mean and scandalous practices, such as those imputed to Mr. Hastings, Sir Edward Coke would have cried more against him than against truth in giving him, such an appellation. It was the great misfortune of the present age, and nothing could more strongly prove its degeneracy, that fine and emollient names were applied to bad actions: a woman guilty of adultery, is called *gallant*; the man who committed it is always in the French, and often in the English language, called *a man of good fortune*. But the Managers for the Commons would never have such a false, dangerous, and novel-like sympathy. When they were describing atrocious guilt, they would use adequate terms. To the charge of delay brought against the Managers by the Counsel, he would only say, that the Managers were only responsible to the Body that sent them, to whom they had explained their conduct: but he defied the Counsel to say, that any delay prejudicial to Mr. Hastings had been caused by the Managers.

Mr. Burke then adverted to a Petition presented at an early stage of the Trial by Mr. Hastings to the House of Lords, in which he states the expences incurred by him previous to the commencement of the Trial to be 30,000*l*. Comparing this with the expence incurred by the Commons, it appeared to him enormous; he therefore made very particular inquiries upon the subject, and he was prepared to say, that the assertion in that Petition was false—one item of the 30,000*l*. was 6000*l*. for

PART VII.

Copying Clerks. Upon investigating the circumstance, he found that the Directors of the East-India Company had given directions that Mr. Hastings should have copies of whatever papers he pleased gratis—therefore the pretended charge of 6000*l*. was utterly unfounded.

Mr. Burke, having argued these points much at length, came to the second; which he had mentioned in the beginning of his Speech, viz. the principle he had laid down, and upon which he found his justification. This principle was, that he wished their Lordships to understand that the people of India were a race beings so much below the rest of Mankind that they had no sense of honour, no notion of equity and justice; that they had always lived in the most abject state of slavery without property, real, personal, heritable or of any kind whatever; that in India, use the words of Mr. Hastings, the power of the Sovereign was every thing, the rights of the People nothing. Such was the principle upon which Mr. Hastings rested his Defence, and it was worthy him; but he would shew to their Lordships, by such a mass of authority as might force conviction, that it was in every particular unfounded. Instead of their having no sense of honour, their feelings upon that point were the most acute, perhaps, of a people; and innumerable instances might be cited to prove it: he could mention cases in which Women in India, who had been accused and acquitted with honour, had put an end to their existence; not being able to survive the disgrace of having been accused. He could shew instances even common Soldiers of that Country, who having been condemned for crimes, pretended who should first be blown from the mouth of the cannon, maintaining their honour in punishment. In short, histories of that Country were full of cases, every one proving the direct negative of Mr. Hastings's assertion. They had no sense of Laws, no right property, was an assertion equally false and equally false; and upon this subject he would beg to refer their Lordships to Mr. Halhed's Book, out of the money paid for the translation of which Mr. Hastings had the *Nabkissen*. That Book, which contains a most accurate digest of the Gentoo Laws, not only proves they have property, and laws to regulate it, but proves as much founded upon justice and reason, and containing as many distinctions, even as our own boasted Code.

Mr. Burke then cited passages from a variety of Oriental Authors, proving

right of property in India, and shewing that that property had been respected by the greatest Princes and Conquerors, by Tamerlane, Gengis Khan, Khouli Khan, and others.—“But,” said Mr. Burke, “the Counsel have fancied that we compared Mr. Hastings to Tamerlane and others, and they have told your Lordships of the thousands of men slaughtered by the ambition of those Princes.

“Good God! have they lost their senses?

“Can they suppose that we meant to compare a maker of Bullock-contracts with an illustrious Conqueror? We never compared Mr. Hastings to a Lion or a Tiger; we have compared him to a Rat or a Weasel. When we assimilate men to such contemptible animals, we do not mean to convey an idea of their incapability of doing injury. When Pharaoh was to be punished, it was by Locusts, by Lice, which, though small and contemptible, are capable of the greatest mischiefs.”

Mr. Burke, on May 30, proceeded.—He said that on the former day (May 28), when he had the honour of addressing the Lordships, he had submitted to them such observations as he thought necessary upon two important points, viz. the demeanour of the Prisoner during the course of this Trial, and the principles upon which his Defence was founded. He had shewn to their Lordships, that this demeanour was of a nature perfectly unusual and unknown in the annals of Parliament. He had shewn, that men the most distinguished for rank and for abilities, had, when called before this High Court, conducted themselves with humility, respect, and decency; and he had contrasted the conduct of those men with the presumption and insolence of the Prisoner—his presumption in making a recriminatory charge upon the Commons—and his insolence, in accusing them of malice and black ingratitude to him; for the Prisoner had not attempted to defend himself by answering the Charges brought against him by the Commons, but on the contrary vested his whole defence on recrimination, charging the Commons with injustice in their Impeachment, and on the other hand both the Commons and their Lordships with delay in the Trial. With respect to the imputation of injustice, he hoped that accusation was already answered; and as to the charge of delay, the Managers for the Commons of Great-Britain did not conceive themselves at liberty to account for their conduct before any other Body than their Constituents, before whom, if it

should appear that there had been anything unnecessary in the course of this Trial, he had pledged himself to prove, that such delay could not be imputed to the Managers. As to the charge of ingratitude which the Prisoner had thought proper to make against the Commons, he (Mr. Hastings) had, towards the close of his Defence, entered into a copious detail of his own merits: it would be therefore proper for their Lordships to take into their consideration what was the nature of those boasted services, and how far they could be taken into estimation as proofs of positive merit on the one hand, or, on the other, how far they could be used as a set-off or a mitigation of the crimes laid to his charge. And here the demeanour of the Prisoner came properly in, as a strong indication of what must have been, and a proof that the conduct of the Defendant in India could hardly have been governed by moderation; for when their Lordships had witnessed the exuberant pride and daring presumption of the Prisoner when standing before the most awful Tribunal in the world, and accused by that Body of Men it was most his duty to bow with reverence and respect to, what might not their Lordships conceive his pride and cruelty to have been, when armed with almost unlimited power over the weak and defenceless, when unrestrained, as he professed himself to be, by any Law, and when elated with the plenitude of usurped Sovereignty?

The Prisoner therefore having, as he would shew in the course of what he had to say to their Lordships, rested his Defence, not on a denial of the Charges brought against him, but on a justification of the various acts upon which the Charges were founded, the question for the consideration of their Lordships' determination ceased to be an issue of Fact, and became an issue of Law. Their Lordships, he was sure, would concur with him, when he laid it down as a clear and indisputable proposition, that all powers of Sovereignty were either discretionary and arbitrary, or limited.—In the first case, where the power vested in the Sovereign was arbitrary, there being no positive written Law to guide him, the person exercising that power was bound to govern his conduct by sound political morals: on the other hand, where the power was limited, and Law applied, he was bound to keep within the exact limits of that power, and to be governed by the strict letter of that Law.

In applying this general principle to the case of the Prisoner, Mr. Burke proceeded

to demonstrate, that Mr. Hastings was bound, in the discharge of his important duty of Governor-General of India, to make the Statutes of Great-Britain the rule of his conduct, as far as they applied; and where they were deficient in their application, he was bound to adopt the laws, rights, franchises, and privileges of the Country he governed, as the guide of his conduct; and where they failed, act upon the broad principles of the Law of Nations, as in all cases with Foreign Powers. These, Mr. Burke said, made the grounds of the present inquiry. To carry this reasoning home to the case of Mr. Hastings, he would remind their Lordships of what he was sure they very well knew, that Mr. Hastings, being the servant of the East India Company, was bound by the Statutes of England which erected that Company, to obey the orders of the Court of Directors, without presuming in the most minute article to deviate from those orders upon his own responsibility. "But see, my Lords," said he, "how Mr. Hastings has thought proper to comply with those Laws: he not only resists them, but avows openly that he did not think himself bound to pay obedience to them. He treats the Acts of our Parliament with contempt, and, in the place of the wise and salutary regulations of our Laws, substitutes his own arbitrary and tyrannical will.—No, my Lords, Mr. Hastings disdained to be bound by the Laws of this Country, or even to be restrained by those of Gengis Khan, Khoulî Khan, or Tamerlane, who, though Tyrants, respected the Laws and preserved the Property of those Countries which they conquered, but takes for example those who had become Traitors to their Sovereigns, that they might be the Tyrants of the People—Cossim Aly Khan, Sujah ul Dowlah, and all those Usurpers and Tyrants, whose principles being more congenial to his own, were deemed more worthy of imitation. These are the Laws which he followed, these are the Laws which he would preserve, by inducing your Lordships to sanction them with the *fiat* of your approbation." [Here Mr. Burke read from parts of the Defence of Mr. Hastings, passages stating, that whenever he thought the Laws of England militated against the interests of the Company, he was at liberty to violate them.] "And thus," said Mr. Burke, "he endeavours to avail himself of his own wrong, attempts to justify one breach of

"the Law by another breach of the Law, and would vindicate his illegal acceptance of corrupt presents, by alleging the distressed and exhausted state of the Company's finances, which had been caused by his own unlawful prodigality and vicious application of the Company's treasures to his favourite system of Corruption."

Mr. Burke next entered into a disquisition upon the nature of Government, of which we lament our inability to give an adequate idea; but we will endeavour, as nearly as we can, to give the general scope of his reasoning.

He first laid it down as a general principle, that all Law and all Sovereignty are derived from Heaven; for if the Laws of every Nation, from the most simple and natural of the most barbarous People, up to the wisest and most salutary Laws of the most refined and enlightened Societies, from the Divine Laws handed down to us in Holy Writ, down to the meanest forms of earthly institution, were attentively examined, they would be found to breathe but one spirit, one principle, equal distributive justice between man and man, and the protection of one individual from the encroachments of the rest. The universality of this principle proved its origin. Out of this principle Laws arose, for the execution of which Sovereignty was established; and all, viz. that principle, those Laws, and that Sovereignty, were thus evidently derived from God.

If then Laws and Sovereignty were sacred, as being the gift of God for the benefit of the People; and if the Laws and Sovereignty of India were, as he contended them to be, founded upon the same principle of Universal Justice, then Mr. Hastings, as a British Governor, sent, not to conquer or extirpate, but to preserve and cherish, was bound to protect the People of that Country in the use of those Laws, and shield that Sovereignty from encroachment or usurpation. How ignominiously he had acted, in direct contradiction to that duty, lay before their Lordships, in evidence unrefuted by any contradictory proof; and indeed, undenied.

Mr. Hastings had asserted, that he had got the Gentoo Code of Laws translated at his own expence; if it were so, 'twere good and he should have approved of such generosity; but how did the fact really appear? So far from paying for the translation, he like the pious person who devoutly stole a Bible, that he might read the Scriptures, he defrauded the Rajah Nookissen of it.

and thus by a double stroke of ingenuity, he contrived to acquire both reputation and money.—If their Lordships were of opinion with him, and he thought they would hardly disagree with him, that swindling of money was bad, surely they must allow, that the swindling of glory and fame to which he had no pretensions, was not only equally atrocious, but infinitely more mean.—Whether, however, Mr. Hastings paid for the translation or not, they were certainly dedicated to him: and here the charge becomes heavier against him; for it was probable he never read them, or, if he had, had acted in direct violation of them; for their Lordships would perceive he was not come out in any one of his acts by the duties contained in that Code: And if the learned Council were as well skilled in the Gentoo Law (which he was sorry to perceive they were not) as they were in the Laws of their own Country, they would find it equally difficult to defend their Client in either. If, however, the Indian Laws contained within them principles against arbitrary institution, which by no means admitted, those exceptions to their general tendency should be produced as a justification for a person acting in the situation of Mr. Hastings; for he relied upon it, that no example of violation or oppression, however sanctioned by the great talents or usurped rank of any Tyrant, should be admitted as a justification of a British Governor, though that Governor had the audacity to plead it as an excuse, and to follow it as an example. All these facts, he said, were in evidence before their Lordships; and in all these crimes their Lordships were called upon by the Prisoner to concur.

Mr. Burke next said, that Mr. Hastings had, by relying upon the examples of those Chiefs alluded to, seemed to conceive himself invested with Sovereign Power, a proposition which he conceived utterly unfounded, because he was only the Servant of the East-India Company, who could not delegate to him Sovereign Power, because they did not possess it themselves: their right was derived from, and confined within the Charter granted by Parliament: they therefore having no such right in them, could not delegate it to Mr. Hastings. Sovereignty was of a nature, taken in its abstract sense, that would not admit of delegation. In England it was placed solely in the hands of the King, who was sovereign over the Lords and over the Commons collectively and individually. The Sovereign Power was entrusted to

him for the public benefit, but it was utterly impossible that he could delegate it wholly and completely to any other person. But the Prisoner, as if conscious that his situation under the Company was that of a Servant, and not that of a Sovereign, bound to obey their commands, and to act in conformity to clear and positive institutions, instead of disobeying the one, and substituting his own arbitrary will in the place of the other, had recourse to another fountain, from which to draw his right of Sovereign Authority, and assumes to exercise the same power as Sujah ul Dowlah had done before him—(a power which extended to the Property, Liberty, and Life of the Subject): but unfortunately this source also failed him, for Sujah ul Dowlah was not a Sovereign himself, but the Representative of a Sovereign, and of course could not give that to Mr. Hastings which he did not possess himself, unless, like Mr. Hastings, he obtained it by an abuse of the power entrusted to him, and acted the part of a Tyrant when he should have performed the duty of a Servant.

He had now, he hoped, shewn that Mr. Hastings's assumption of Sovereign Power was as unfounded as it was insolent, and this conduct was to be judged of by its conformity to a violation of the rules prescribed for his guidance.—If their Lordships were to do that which he was sure they never would—if they were to adopt the principles laid down by Mr. Hastings, by permitting a man to escape punishment who had so dangerously violated every rule of Government and every established Law, they would do what was even worse than destroying all principles, they would establish false ones.—Man, and every other animal in their most savage state, may be ferocious, may be cruel; but when the appetite is satiated, they are harmless, nay even docile.—But Man, when actuated by false principles firmly fixed in his mind, is infinitely more dangerous, not for temporary ferocity, but for systematic wickedness, deliberate error, perennial vice.

Mr. Burke then proceeded to shew, that the whole of the Charge against Cheyt Sing was that of an unwillingness to pay a sum of money much beyond the regular Tribute which he was bound to pay; a conduct for which that Rajah was justifiable upon every principle of the Laws of Nations, Nature, and Morality, he being invested with all the attributes of Sovereignty, and exercising all its functions. The Prisoner at the Bar having thus not only violated every principle of justice and

general Law, but having acted in direct opposition to the positive Laws of England, and treating the source from which those Laws were derived with contempt, was guilty of Contumacy and Rebellion; of Rebellion not in its abstract, but in its strict sense, overt acts of which were to be found upon their Lordships' minutes, proved under the sanction of an oath, and given in as part of the Prisoner's Defence. But supposing any Subject were not in actual Rebellion, but suspected of a conspiracy against the Government, how should Mr. Hastings have acted? He should, as a British Magistrate, have endeavoured to prevent the effects of such conspiracy; he should have convened the party suspected before him, and have investigated the proofs of his guilt, before he proceeded to conviction and punishment. — Before Mr. Hastings had proceeded to inflict any punishment, he should have considered the principle of the Gentoo Law, with respect to apportioning the punishment to the rank and situation of the offender, because it must be obvious to their Lordships, that the same punishment might operate much more severely upon one man than another;—he should have considered also, that it was a principle in the Gentoo Law, that although a Magistrate might pass judgment upon a delinquent in his own house, yet in such case his house must be open to access, to prevent all suspicion of partiality or corruption. Under the Mahomedan Law, he was equally bound to have informed the party of the crime laid to his charge, and to have proceeded in an open and judicial manner. Thus, under whatsoever Law Mr. Hastings may pretend to have acted, whether English, Mahomedan, or Gentoo, he is equally guilty, because under all of them he was bound to have called Cheyt Sing before him, previous to his inflicting any punishment upon him.

Instead of acting upon these principles of Law and Justice, he not only never accused Cheyt Sing of Rebellion, but he never mentioned to the Council, to Lord Macartney, to Mr. Wheeler, or to any person to whom he communicated his intention of going to *Benares*, any thing like a suspicion of that Rajah being in a state of Rebellion.—In addition to the circumstance of Mr. Hastings never having informed any one person of his suspicion of Cheyt Sing's Rebellion, Mr. Burke begged of their Lordships to consider the actual impossibility of such an idea entering into the contemplation of that Prince, as that of rebelling against the

Company: in the first place, he was a man by nature extremely timid, and possessed of but a very inconsiderable district:—the whole of his conduct under the vigilant inspection of the Vakeels, Agents, and other creatures of Mr. Hastings, immediately under the eye of an English Resident, and surrounded by a whole body of Military—could he, acting under such circumstances, and possessing his Sovereignty on moderate terms—could he, he demanded, think of Rebellion? could it be believed? where could he look for safety? It could not be with Sujah Dowlah, it could not be with the Mahrattas, or any of the other Indian Powers, who he knew would reduce him to the most abject servitude.—He called upon Mr. Hastings to shew that the Resident in *Benares*, the Vakeels, or any person whatever, had ever expressed a suspicion of a Rebellion; or to produce any evidence to convince their Lordships of a circumstance in every point of view to be improbable. "But," said Mr. Burke, "I will now produce such damning proof that Mr. Hastings did not consider Cheyt Sing in a state of Rebellion, as it is impossible for him to get over; for I will read from Mr. Hastings's own words, the most unequivocal admission, that at the period in which the prisoner would induce your Lordships to believe that Cheyt Sing was in actual Rebellion, that he was not even so much as suspected of an intention towards it by Mr. Hastings."

[Here Mr. Burke read several Extracts from Mr. Hastings's Narrative from *Benares*, in which he says, that he does not believe Cheyt Sing guilty of a premeditated project for Rebellion, when he punished him for his former misconduct. Again, he declares positively, that it was not for Rebellion, but for personal contumacy, that he fined him 500,000*l.* but that after his refusal to pay that Fine, he considered him as a Rebel.]

"Here then," said Mr. Burke, "it appears from the Prisoner's confession, that the only symptom of Rebellion was the Punishment and Fine laid on by himself, for an insult offered to himself. The Rebellion therefore, as fixed by Mr. Hastings, appears to be the consequence of that Fine, and not the Fine the consequence of the Rebellion—so that," said he, "Mr. Hastings went up to *Benares* under the impulse of malice, to wreak the meanest vengeance for private wrongs, to the manifest injury of the Company's interests, and to the indebilitated disgrace of the British name: thence

"thence sprang the rebellion; and all the calamities and mischiefs attending it, arose from pride, malice, insatiable avarice, and an ambition to follow the example of Sujah Dowlah, and the other detestable tyrants of the East."

Mr. Burke next proceeded to advert to another part of the Defence of Mr. Hastings, in which he endeavoured to justify himself by precedent in taking Bribes, or, as he speciously denominates them, Fines: and here, he said, it would have occurred to a man of an enlarged mind and honest heart, to have chosen, when he was searching for precedents, those who were most eminent in antiquity for virtue and talents, and have adopted the examples laid down by the greatest philosophers, writers, and legislators; but instead of that, Mr. Hastings chose the most abandoned and languinary tyrants of the East, Kossim Ali Khan and Sujah ul Dowlah. Sujah ul Dowlah, said he, took a fine. "Good God! my Lords, see how guilt perverts the understanding, blinds the faculties, and extinguishes every power of discrimination in the human mind! Could your Lordships have believed, that the Governor-General of India, the sagacious, the ingenious Mr. Hastings, should have been so stupid as not to distinguish between a fine of purchase and a fine of penalty?—a fine of purchase, as in the case of Sujah ul Dowlah, and a tyrannical fine of penalty, as in his own?"—Upon the whole, he thought the same lines were applicable to the Prisoner, which Lord Coke had cited from Virgil upon a former occasion, in which that admirable Poet describes the conduct of the Judges in Hell:

*Grossus hæc Radamantibus habet durissima Regra:
Cassigatque, audacique Delos; subiguque feteri
Quæ quis apud superos, furo lætatus inani,
Disiuit in se iam commissæ præcula menti.*

If their Lordships wished to see the conduct of those Judges of Hell exemplified, they had only to look for it in the conduct of the Prisoner at the bar.—But while Mr. Hastings was acting in this oppressive manner, was he in other respects idle? No, by no means; for it would appear that he was busily employed in a plot which but deeper; was negotiating, and had actually received proposals for the sale of the province; and, in aggravation of the guilt of such a transaction, had chosen the very last man almost in existence that he ought to have chosen, to commit the charge of the province to: he chose Aliuph ul Dowlah, who was

bankrupt, and in the last degree of indigence; who owed already more to the Company than he was able to pay; and who, by the necessities of his situation, must have been constrained to a life of rapine. This bankrupt tyrant, stimulated by want, was the man with whom the Prisoner entered into a treaty to deliver up Cheyt Sing. To the pillage of this needy tyrant he delivered up a country, which, from its superior beauty and fertility, was called the Garden of God. To him he agreed to give the power to break into the before unpolluted Sanctuary of the Wqmen, the Seat of Honour of that unfortunate, injured Prince, which the laws of the country and the usage of time immemorial had held sacred even from the execution of those laws or from the entrance of the Magistrate. Mr. Hastings never communicated to the Rajah, or to any other person, the sum with which he would be satisfied, nor the time at which it should be paid; yet when Cheyt Sing offered him twenty lacks of rupees, he refused it, saying that it came too late. He also affected the utmost resentment against Cheyt Sing for not having offered him fifty instead of twenty lacks, he having determined in his own mind not to accept a less sum than the fifty lacks. But if this was his purpose, why did he not communicate it to the Rajah? Instead of doing so, he kept it a profound secret, as if to entrap that unfortunate Prince; for it appeared from the evidence produced even by Mr. Hastings, that not even the Resident at Benares knew the sum which was demanded, or even that any sum whatever had been specified.

To point out the various inconsistencies in Mr. Hastings's account of these transactions, were an endless task; but there was one which Mr. Burke said he could not avoid mentioning, viz. that at one time he positively declares that the whole of his proceeding against Cheyt Sing was only *in terrorem*, while at the very same moment he put into execution that which he said was only intended as a threat. Thus it would be found, that no two accounts of the Prisoner's agreed with one another, but the one constantly operated as a contradiction to the other.

Mr. Burke then proceeded to shew, in the clearest manner, that so far from the Company having any right or claim to the Fort of Bidjezur, they had not even a colourable pretence to it; for the real property in it lay in Cheyt Sing. Mr. Hastings was so conscious of this, that when seeking for pretexts under which to shelter himself

himself upon that occasion, he said he found that some of his predecessors had wished to get possession of it; and sits up the most ludicrous justification that ever was conceived, namely, the *wish* of his predecessors, as if his oppressive acts could be justified by their illegal intentions.

Mr. Burke next adverted to that part of Mr. Hastings's Defence in which he justified his assuming military rank by the subsequent assumption of it by Lord Cornwallis:—this, he contended, was an aggravation of the guilt of the Prisoner, because it was an attempt to offer a mischief produced by the example of his own act in justification of that very act. But Mr. Burke denied the fact; for Lord Cornwallis had united in him the double offices of Commander in Chief and Governor-General, which was so far from being the case with Mr. Hastings, that the Parliament of England was obliged to pass an Act to confer that united power on Lord Cornwallis. He reprobated the partition of the power of Governor-General between Mr. Hastings and Mr. Wheeler, as utterly illegal and inconsistent. He insisted that Mr. Hastings's journey to Benares could have originated in nothing but the most foul and unjustifiable motives; for there was no act of advantage to the Company that he could not have done better by remaining in Calcutta; and whether he wished to make or to violate a treaty, or even to overcome any supposed resistance of Cheyt Sing's, he might have done it with much more effect by his agents; and there was no such talisman in the great and mighty person of Mr. Hastings, but that Major Popham, with his army, might as completely have effected the subjugation of Cheyt Sing, as that Gentleman with his few companies of Seapoys.

Mr. Burke then, in the strongest language, pain ed the additional insult offered to Cheyt Sing in his selection of a person as the substitute for that Prince. He appointed Huzzam Sing, who had dishonoured his family, polluted his Father's bed, and was his own inveterate enemy; as if the vindictive spirit of the Prisoner, unsated by the enormous injuries he had already offered him, had determined to embitter ruin, to make destruction dishonourable, disgrace more infamous, and affliction more afflictive.

Mr. Burke then shewed, from Minutes of the Evidence, which he read, that so far from Cheyt Sing disclosing any sinister intentions, he had three times put his life into the power of the Prisoner, with all

the confidence of an unsuspecting heart, till at last his subjects, aware of the danger and treachery that surrounded him, and anxious for the honour of their Sovereign, flocked around him, and against his will forced him into resistance.

Having shewn the cruelty of Mr. Hastings's conduct to Cheyt Sing, Mr. Burke proceeded to prove its impolicy with respect to the interests of the Company; for Cheyt Sing, in his flight, carried off with him no less than four hundred thousand pounds, which must have greatly impoverished the province. He left behind him two hundred thousand pounds in his Zenana, as in a sanctuary which never had, and, as he vainly supposed, never could be violated. But no sanctuary was sacred in Mr. Hastings's eye; for in his Letter to Major Popham, he animated the soldiers to plunder it; and, as if to shew that he was incapable of keeping faith with any one, he directed the Company's Advocate at Calcutta to sue the Soldier for the plunder which they had taken by his direction. "Calculate then," said Mr. Burke, "the profit and loss of this stupendous account of tyranny"—"put on one side four hundred thousand pounds carried off by Cheyt Sing—two hundred thousand pounds lavished in plunder among the Soldiers;—the agriculture, laws, and commerce of a country, torn up by the roots—the British Nation dishonoured, and all sanctions, human and divine, trampled under foot; and on the other put—what? The gratification of Mr. Hastings's malice for a private insult and to have been offered to himself.—So long as arithmetical numbers stand, as long as truth shall have existence, and justice be the first principle of social union, so long shall the cruelty, avarice, and extortion of WARREN HASTINGS appear manifest to the world!"

Mr. Burke next told their Lordships, that they were now to view Mr. Hastings in a new character—that of a Legislator. Every thing being swept away by his ruinous hand, the People of the Country were butchered and some exiled, the Prince and his Family outraged; without one plan, the complete conquest made of a country little less, in point of size and revenue, than England and Wales; their Lordships were to see how far the Prisoner, who had compared himself as a conqueror to Alexander the Great, had imitated the example of that illustrious character as a Legislator—in which capacity he would be found acting in defiance

of the laws of his Country on the one hand, and on the other giving a loose to the most unbridled arbitrary will, and the most harsh and ferocious disposition, and, standing in a middle capacity between the inferior and superior, by his infamous conduct to both proclaimed himself at once both the Rebel and the Tyrant. As soon as by those illicit means he got possession of the country, he proceeded, without any communication with the Council, to dispose of the country as if it was actually his own property; confiscated as it suited the needy clamours of his avarice, distributed as it pleased his capricious inclination, and, as he took, gave away without permission, and by a master-stroke of financial hypocrisy founded a Gentoo Charity, to pray, not for the Country, not for the Government of England, not for the Company, but—for the prosperity of WARREN HASTINGS, ESQ.

When he had thus dispatched the property of the country, he thought then of a person to govern under his own arbitrary will, and nominated to succeed the Rajah in his office Durbidgee Sing, a boy of nineteen years of age, who, he himself confessed, had neither right to the office nor ability to fill it; but to enable him to discharge the duty of it, chooses for his guardian the Boy's Father, a man of acknowledged incapacity. To ensure to himself the dominion over those nominal Governors, he appointed as Resident Mr. Markham, a Gentleman possessed of the very strong recommendatory qualifications of twenty-one years of age and five months of experience. When he mentioned this Gentleman's name in that manner, he wished their Lordships to understand, that not to him, but to Mr. Hastings who appointed him, were justly to be attributed the misfortunes that ensued to that Country and the Company from his incapacity; for when any man was burthened beyond his strength, he was no longer answerable for his exertions. For this Gentleman's services, however, and to support his dignity, Mr. Hastings allowed the most extravagant emoluments, not less than sixty thousand a-year authorized allowance, besides what their Lordships' knowledge of the system of peculation in that country might suppose him to have picked up.

In this, as in every other transaction of Mr. Hastings, Corruption reared its head, and stared them in the face. From this Durbidgee Sing, Mr. Markham, by which he would be understood to mean Mr. Hastings, exacted a net revenue of four

hundred thousand a-year, although it appeared, from the evidence of Mr. Markham himself, that he, in Privy Council with his sage Mounthee and his sage Clerk, having made up the revenue at the utmost they could bring it to, it was only three hundred and sixty thousand; a circumstance which could not fail to engage the attention of their Lordships, that an inexperienced Youth of twenty-one, a hireling Mounthee, and a venal Clerk, should sit as *Quorum* to decide upon the revenues of a great country. Mr. Duncan, too, whose character stood with honour on their Lordships' records, has declared, that the whole revenues of the country, take them how they would, could not be made to exceed three hundred and forty thousand pounds; in addition to which, if their Lordships would look back into the revenues of any number of years, in the most prosperous times, the country was never known to produce any thing near four hundred thousand pounds. As a proof that Mr. Hastings was conscious of the enmity of this exaction, he agreed to give for the future a remission to the Rajah, but granted that remission only on the terms that the full sum should be paid up to the time at which it was granted, and thus by one act acknowledged the enmity of the exaction; and enforced the execution of it: and not one of these circumstances did he lay before the Council.

Mr. Burke said it was a principle, the universal promulgation of which might be of service to mankind, that that man whom his unlucky fate condemns to the exercise of arbitrary power, is as certainly condemned to perpetual ignorance and blindness. The slaves who shew his favour will not set him right, and the honest men who do not, dare not. Thus it happened with Mr. Hastings—his rapid descent in wickedness deprived him of his intellects and sight, while none were so hardy as to dare to impede his progress.

Under this blindness and fatuity he entirely destroyed the country, so that while he exacted the heaviest revenue from it that ever was known, he rendered it utterly unproductive even of support for its inhabitants; and considering it as his own private property, received complaints against Durbidgee Sing as against a private steward, and proceeded in a more summary way against the one than he could against the other, and never communicated to the Council a single title either of the complaints or of the consequent proceedings, till the ruin of that unhappy

man was effected, although he had full five months during which to make such communication. He then called upon the Board to confirm all the violent acts of himself and Mr. Markham; said he was personally hurt at the discredit done to his appointment; and desired them to concur in the punishment of the Rajah, when in strict justice it was himself who merited the punishment. At the same time he denounced, that if every rupee of the exaction was not paid, the life of Durbidgee Sing should answer for it.

Mr. Hastings having thus annihilated all law, and the People having no fixed point to which to resort for protection, had nothing left but prayer and petition: this they had recourse to—many petitions were sent in against Mr. Markham; but Mr. Hastings received the petitions of Mr. Markham against them, and suppressed those petitions which were sent against that Gentleman. Under colour of the rigorous exaction of Mr. Markham of that enormous revenue, the collection of which, if it could have been collected at all, was prevented by his interference, Durbidgee Sing was plunged into the dungeon of Chunar, selected for its horrors, and his life was threatened if he did not pay; but there being no proof of his having collected, but, on the contrary, strong proofs that he could not be collected at all, and that he was persecuted for that which the People knew had no existence, application was made to Mr. Hastings for his release; but the Tyrant proceeded to Europe without releasing him, and he died in jail after his departure from India.

After his death, upon an examination of his affairs, and a search of his house, it appeared that the unhappy man died a bankrupt. "In the name of this unhappy Victim," said Mr. Burke, "who was condemned and suffered without being heard, and in the name of his afflicted Family, who were left to deplore his untimely death, I conjure your Lordships to do severe justice upon the Criminal at your Bar.—Thus was a second Rajah of Benares cut off.—From that period the revenues of the country were managed entirely by Mr. Markham, under the ostensible name of a Native Collector, till Mr. Hastings re-

turned to Europe, and the reign of his "Viceroy ended."

Mr. Burke said, that in order to supersede all necessity of observation, he would read from Mr. Hastings's own details what would be sufficient to condemn him. He then read to the following effect: That in April 1784, the Prisoner said, that in passing through Benares he was followed by the clamours of the disconsolate inhabitants; that from Buxar to the opposite boundaries of the country, the whole was nearly depopulated, and nothing appeared but ruin and devastation. This was the description he gave of that very country in 1784, which but a short time before he himself had described as a place that Humanity must shed tears of joy to see, thick set with villages teeming with the productions of nature and agriculture, and so cultivated that the soldiers were obliged to march in file to avoid destroying the fruits of the earth, which, had they walked in rank, they must have done.

In confirmation of this fact, Mr. Burke directed their Lordships' attention to a transaction which had since taken place: Lord Cornwallis had sent up Mr. Jonathan Duncan to see the country; and, to shew how deep the wounds of arbitrary power are, and how slowly, if ever, they recover, Mr. Duncan reported, that not a field of some districts were in a state of cultivation, and that in the rest it was one continued waste as far as the eye could reach; and that, upon enquiry, he found that the whole was owing to the mismanagement of former Governors, and that the date of the ruin was to be fixed from the expulsion of Claver Sing.

"Oh!" said Mr. Burke, "what triumph for a British Governor, who on the bony wings of peace and beneficence should carry mercy, blessing, and gladsome in his train, to be pursued by the clamours and execrations of an injured people, or to create a solitude around him wherever he went; the unhappy victims flying from him as from a pestilence; giving up their all, their industry, and their homes, and facing famine and exile, rather than face the Tyrant who had overspread their country with ruin!"

Mr.

* See a complete answer to this and the preceding assertions in Note to p. 136.

† This part of Mr. Burke's Speech was delivered on June 3; in the following sitting of the Court, on June 5, after they had returned to the Upper Chamber of Parliament, Lord Hardwicke presented the following Petition from Mr. Hastings to the Lords:

"That it is with the greatest reluctance and concern that your Petitioner feels himself obliged once more to address your Lordships on the subject of his long-dependant Trial.

Mr. Burke said, on the last day [JUNE 3.] he had been obliged to conclude where the prosperity and the patience concluded too; where a great country was laid waste, its agriculture and commerce destroyed, and its lawful Sovereign deposed and banished. Their Lordships were now to proceed from that desolated country to another, and to travel from desolation to desolation, because they were to walk in the steps of Warren Hastings. But before their Lordships proceeded to the consideration of what he had to offer, he would call to their recollection one grand principle, viz. that a man was not innoxious merely because he was insignificant; for manifold experience had shewn, that men bred in the most mean * and wicked habits, when placed in unsuitable power, do more mischief than the worst tyrants born under canopies of state and swaddled in cloth of purple. The Prisoner at the Bar amply verified this remark; for if the great tyrants of the East, to whom the Council had thought proper to oppose his character, had raised a pyramid of ninety thousand heads by the splendid havoc of the Sword, the Prisoner had raised his pyramid by the meaner and more inevitably destructive havoc of Famine.

Having endeavoured to impress this principle upon their Lordships' recollection, his next duty was to lead their attention to the conduct of the Prisoner in the province of Oude, a country hardly inferior in size to England; which conduct

the Council of the Prisoner had endeavoured to palliate by the most gross and unfounded slanders upon the pedigree of the reigning Prince of that country, and, taking for their authority that contemptible production, "Dow's History of Indostan," which few read, but almost all who read despised, had endeavoured to throw a slur upon that great family by saying that he was the son of a pedlar.

Sujah Dowlah, he said, it would appear from Mr. Verelst's Account of India, was, though haughty and ferocious in his nature, at once magnificent in his expences and oeconomical in his state affairs. He made an annual saving from his revenues without straining them, and of course had the confidence of his people, though a tyrant. But the Prisoner had treated his offspring with indignity below servility, and raked up the ashes of the dead to vilify that Prince, though he was not ashamed to take and put in his pocket immense sums of his money. But whether the account given to their Lordships of that family by the Dows, the Hastings's, and that infamous clan of slanderers, was true or not, could have no weight in their Lordships' determination; for Mr. Hastings, at all events, found him a sovereign exercising authority by the consent of his people, with a revenue equal to that of England, an army of 120 000 men, and a splendid court, and had no right to go back into his pedigree, in order to find defects to cover his own enormities.

"Your Petitioner begs leave to lay before your Lordships his well-founded apprehensions excited by the manner in which the General Reply on the part of the Managers is now evidently conducted, that such Reply is meant to be extended beyond the probable limits of the present Session of Parliament.

"Your Petitioner hopes he may be allowed to bring to your Lordships' recollection, that the Reply was, at the instance of the Managers, adjourned over from the last year, under the assurance of an accelerated and early termination of it; and that the whole of the present Session, except a small interruption occasioned by the examination of the Marquis Cornwallis, has been employed by the Honourable Managers, notwithstanding that your Petitioner has, for the purpose of dispatch, in addition to the facilities made for a similar purpose in the last year, waved his right to observe, by his Council, on the new evidence adduced in Reply.

"Your Petitioner begs leave again to suggest to your Lordships the unexampled duration of his Trial; the indefinite period to which it may be still further protracted; and the extreme vexation and injury to which he would be subjected, if the intention on the part of his prosecutors should be suffered to have effect.

"He implores, therefore, of your Lordships humanity and justice, that such measures may be adopted on the part of your Lordships as may assure to your Petitioner the speedy termination of this painful and unparalleled proceeding; and further, if need should be, that your Lordships will graciously consider, in such a manner as to the wisdom and dignity of your Lordships may seem meet, to become sponsors to his Majesty's goodness in his behalf, that the present Sessions of Parliament may be permitted to continue till the Reply on the part of the Honourable Managers for the House of Commons shall be fully and finally closed.

(Signed)

"WARREN HASTINGS.

"Westminster Hall, June 5, 1794."

* See an answer to this equally false and illiberal insinuation against Mr. Hastings' origin, and which was repeated on a subsequent day, in the NOTE. page 140

In 1775 Sujah ul Dowla died, leaving one lawful child, Asoph ul Dowla, and eighty by his concubines, all of whom, by the customs of the Mahometan Courts, had rights and privileges peculiar to themselves, and even pretensions to the succession. With this Prince a Treaty had been made, which however gave no power of interference with the interior of the country; but Mr. Hastings set up as his defence, that by this Treaty the Nabob was reduced to an actual state of vassalage; and while he admired on the one hand the flourishing state of Oude at the time of this Treaty, on the other he avows its total ruin during his administration; but he says it was occasioned by a bad system of Government established there. Before he would remark upon this transaction, he would lay it down as a principle, that mere systems never rendered a people happy or unhappy, but as they gave wicked men room to act. Had the system however been never so pernicious, was it not the duty of Mr. Hastings to correct it by his Administration? But by saying that he acted in conformity thereto, he avowed himself the instrument of that villainous system; and it appeared by Mr. Hastings's evidence (which Mr. Burke read), that by good faith there was not a nation in India but might have been won over to England, and yet that in fact they all abhorred the connection. This disgrace upon the British name, and this abhorrence of its servants, took rise only in the Administration of Mr. Hastings, who threw the whole country into a Malquerade, who invested Slaves with authority, and turned Governors into Slaves.

Mr. Burke then adverted to that part of the Prisoner's Defence, in which he stated that the reason why he did not oppose that corrupt system in the constitution of Oude, was, that there was a majority in Council against him; and to strengthen his defence, had thrown aspersions on the character of General Clavering, Colonel Monson, and Mr. Francis, men whom, contemplating their conduct in India, he must respect, whether living or dead, and whose fate, when compared with that of this Prisoner, served to remind him of an observation by no means new, that let a man be ever so corrupt and wealthy, he has hosts of friends; but let him stem the torrent of corruption, and a thousand mouths are opened against him. But Mr. Burke insisted, that whether Mr. Hastings had a majority in the Council or not, he was bound to propose measures to counteract that system; and even though he knew

his propositions would be negatived, at least to record his disapprobation of it. But taking the Prisoner's objection to those gentlemen (v. z. Clavering, Monson, and Francis), and supposing them to have been as wicked as he said, their power lasted but for a very short time, after which he was left in full power over the Councils of the country, and in full possession of the government of Oude. Being thus invested with unlimited power, and finding the Nabob, as he would represent him, a vassal to the Company, he determined to make him a vassal to himself, and to that end annihilated the whole Persian Correspondence of Oude (which, then Lordships knew, must comprize the whole Correspondence, as the Persian is the only language in which the business of all Eastern courts is transacted), secreted and kept it in a private cabinet, and never communicated it to the Council from 1781 to 1785. But as nothing spoke so strongly against a man as his own evidence, so nothing could establish a fact so strongly as a record; and in order to confirm his assertion relative to the suppression of the Correspondence, Mr. Burke said he would read from the Company's Records a statement of the fact as it really stood. [Here Mr. Burke read from the Minutes of Council, a statement of the Persian Translator, that for four years he found no Persian document whatsoever till after the departure of Mr. Hastings, when he found some in a mutilated state in the trunk of Capt. John Scott.]

Thus, when the Council, emancipated from the tyranny of Mr. Hastings, dared to think for themselves, and to call for the Records, out they came from the Pandora's Box, that abyss of secrets, Capt. John Scott's trunk, mutilated and garbled; and thus the redoubtable Governor of India, with the assistance of that miraculous Cabinet, that Aladdin's wonderful lamp, kept the government of Oude in his hands, made a tool of the Nabob, blinded the Council, and destroyed not only that country, but the interests of Great Britain. This, Mr. Burke insisted, was a positive act of rebellion against the laws of his country, while the concealment of the records was not only a substantial crime in itself, but a positive proof of other crimes.

Having thus rendered the Council and the Nabob subservient to his purposes, he determined to proceed further; and to follow his system of rebellion, denied the right of the Company to the appointment of their own officers; and, in defiance of a positive order of the Court of Directors,

appointing Mr. Bristow Resident at Lucknow, he recalled that Gentleman from that office, and sent in his place Middleton and Johnson, two instruments of his own; and, not content with this positive disobedience, boasted of it, and said that he resisted Bristow only because the Court of Directors appointed him; and as he promulgated that declaration to the Nabob, and to all the Powers of that country, had certainly so far done all he could to expose the nakedness and imbecility of the Parliament of Great Britain, and the Company, which acted under its authority. [Mr. Burke here read a letter to that effect from the defendant to the Nabob of Oude.] But afterwards, when it suited his own purpose, and when the Company had ceased to recommend Mr. Bristow, he appointed that Gentleman himself.

Mr. Burke read private letters from Govind Ram to the Vizier, and from the Vizier to Govind Ram, for the purpose of developing the various machinations of Mr. Hastings in Oude with the view of thwarting the intentions of the Court of Directors, and at the same time to screen his conduct from their knowledge. It appeared that the letter containing a requisition from the Nabob, was first written by Mr. Hastings, and sent up to the Nabob, in order to be written again, and sent as his own. To such a length was this carried by Mr. Hastings, and there appeared such manifest contradictions between his public declarations and his private instructions, that the Vizier, by the Nabob's order, wrote to the Prisoner, and begged him to state really what were his intentions, for among such innumerable inconsistencies he could not discover them.

—“Here,” said Mr. Burke, “here, my Lords, is a discovery of a new and extraordinary kind—here, my Lords, the crooked machinery of this great and important nature, in which the Manager, I mean Mr. Hastings, had so long dazzled the eyes of the world with the splendor of his pantomimical deceptions—here the flying of witches, the sinking of ghosts, the trap-doors, and the Harlequinades—here all the strutting of the Signors and the sweet blandishments of the Signoras, and the great Master of the machinery himself, were all, all opened and exposed to view in that Cabinet of flight of hand and hocus

“pocus, the Trunk of Captain John Scott, that miraculous Trunk which produced all the effects of *Aladin's* wonderful lamp.”

The Nabob, at last reduced to the utmost extremity, applied to the Prisoner to be relieved from that band of British officers by whom he was surrounded and oppressed; among those was to be found a name ever memorable in India, viz. Colonel Hannay, who had been recommended to Mr. Hastings by Sir Elijah Impey, and turned out a worthy fruit of such a stock.—This man had the command of two regiments of the Company's troops in the province of Oude, exercised also the office of a Farmer-General of the Revenue, and was enabled by the power he possessed, of Commander in Chief, to enforce his exactions as Farmer General; and in instances where the unfortunate inhabitants refused payment, he confined them in open air in cages, and exercised on them the most unheard-of severities. To such a degree were they at last reduced, that they were obliged to sell their children in order to pay his arbitrary exactions. The evidence upon this subject, Mr. Burke said, demanded their Lordships' most positive credence, when they recollected that it was extracted from the witnesses like drops of blood, and was proved by the Prisoner's own evidence. This produced a general rebellion; the forts, and all the dungeons, were filled with prisoners; the people rose at the call of Nature, and each, as he stood affected, demanded his parent, his brother, or his child; and, as an earnest of the clemency they were to expect, Colonel Hannay cut off the heads of eighteen of the principal inhabitants, and threw them over the battlements; and of this transaction no account, no responsibility was to be found but the will of that gloomy murderer.

At length the Nabob, routed from the state of debasement into which the tyranny of Mr. Hastings had sunk his mind, demanded the recall of Colonel Hannay, which was with much difficulty complied with.

Here Mr. Burke read a letter from the Vizier, expressive of the utmost humility, in which he swears, by the Holy Prophet, that was Hannay to come again into Oude, he would fly the country.

Mr. Burke said, that on the last day*, he had

* June 5. On the opening of the Court this day (JUNE 7) he began by complaining in very strong terms both of the Court and Mr. Hastings; of the latter, for writing a most audacious Libel, under the name of a Petition (alluding to that presented by Lord Hardwicke.

had proved that Mr. Hastings had been guilty of premeditated Rebellion against the Acts of the Parliament of Great Britain, and against the Acts of his Masters, the Court of Directors. He had also proved his vengeance against those Officers of the Company who refused obedience to him, and only rested their rights upon the Company. He had proved the absolute vassalage of the Nabob to the Prisoner, and his being made by him the weak instrument of his own ruin, and of the ruin of his august Family; he was now, he said, to call the attention of their Lordships to the treatment of their Prince, in which cruelty and upstart tyranny was carried to a refinement unexampled in the ingenuity of man. The Prisoner, not satisfied with the injuries he had heaped upon the unhappy Prince, brought him, who had no will of his own, down to Chunar, under pretence of settling all misunderstandings, and reconciling the British interest with that of the Nabob; accordingly the Nabob came down.

Mr. Hastings having brought this miserable victim down to Chunar, prevailed upon him to sign a certain Treaty, under the pretence that the stipulations which immediately affected the interest of the Nabob were not to be executed, but were to be in *licu*, as it were, of those conditions which were favourable to the Nabob.—The first Article of the Treaty was, that Mr. Hastings was to order away the rabble of British Pensioners and Officers, particularly the new Brigade, who all together constituted a weight that nearly sunk the Nabob, and exhausted his Revenues; while on the other hand, the Nabob undertook to resume those Jaghires which had been granted by former Nabobs, either to the Royal Family for support, or to their Subjects for services, and which were considered as fixed and permanent property: these were to be resumed, and made a new source of peculation for Mr. Hastings. In order to shew that the Prisoner, from the beginning, had no intention of performing either part of this Treaty, Mr. Burke read a Letter of Mr. Middleton, in which he says that the Nabob was ready to conform to whatever Mr. Hastings might prescribe, and that he (Middleton) was ready to take his share of the odium of the Prisoner's non-performance of that agreement. But what shewed that the Defendant was utterly

regardless of the appearance even of decency, on the very day on which the Treaty was signed he recommended new Pensioners to the Nabob. [Page in the printed Minutes 938.]

Their Lordships were then to observe how far Mr. Hastings adhered to his private promise to the Nabob, on the strength of which that Prince had been induced to sign the Treaty of Chunar. Mr. Hastings had come down from Benares, frustrated in his intention to get 500,000*l.* which he had promised himself by his journey there; but seeing the Country ravaged, and nothing but disgrace and solitude about him, and afraid, after the ruin he had made, to return without some plunder, he revolved in his mind a vast variety of stratagems, and at length hit upon this happy expedient of plundering the principal people of Oude of their property, under the name of a resumption of the Jaghires. But aware that the Nabob, from common justice, as well as from the natural feelings of a man to his own family, must feel a repugnance to carry such a plan into execution, he perfidiously promised him that those stipulations should not be enforced, which promise he nevertheless broke as soon as the Treaty was signed, by wresting the Jaghires from their lawful owners.

Mr. Burke defined the nature of that species of property called Jaghires, and assimilated them to the feudal possessions in Europe; and said, that Jacobinism never struck a more effectual blow against property than their Lordships would do, if, by approving of this measure, they sanctioned the idea of arbitrary confiscations for the purpose of creating revenue. For his part, viewing it in the light of justice to the individual, or policy in the State, his prayer respecting property should ever be, *Esto perpetua*.

Mr. Burke then proceeded to shew, that when this part of the Treaty came to be carried into execution, the Nabob shewed the most acute repentance for having been trepanned into signing the Treaty. He not only expressed reluctance, but absolutely fell at the feet of Middleton, conjuring and entreating him to spare him the horror of turning all the different branches of his family, who had been provided for by those Jaghires, destitute upon the world; and finding all his efforts to melt the obdurate heart of Middleton ineffectual, and fearing that a

cke, and inserted in p. 129); and of the former, for having recorded it in their Journals. What the House of Commons would do, in consequence of this insult, he could not tell, as he had not had an opportunity of consulting the House upon it; he should therefore proceed as if no such Libel had been written.

Rebellion would be the consequence of the indignation of his people at such treatment, he sent his family away, and petitioned Mr. Hastings to relax from his unjust resolution; but in vain—in vain he begged, prayed, assembled, and put in practice every delay—the inexorable Middleton usurped openly the Government of the Nabob, and with all the harsh *hauteur* of a tyrannous Conqueror, declared that he would issue Purwanas to compel the execution of the Treaty. Here Mr. Burke said, that he would read Hastings's and Middleton's own account of the business, and then leave it to their Lordships, whether the highest pitch of crimination they had ever witnessed could equal such a nefarious avowal as those Letters contained.

Here he read Mr. Middleton's Letter of December 1781, page 809 in the Minutes, in which he states that the Nabob's finances were so bad, that he was not able to pay his Troops; that the resumption of the Jaghires was obviously against his inclination, for that a settled melancholy had taken possession of him, so as to endanger his health, and that therefore he (Middleton) suspended the execution until he knew Mr. Hastings's pleasure.

Here, said Mr. Burke, your Lordships may perceive the conflict between the natural feelings of humanity and the abject habits of a slave; but Mr. Hastings stood superior to such feelings, and sent a body of troops to enforce the immediate execution of this Treaty. It must be a considerable aggravation of an injury, to receive it from a set of obscure people, coming, like the English, from an unknown Country—it was a bitter, bitter draught to any having the feelings of men. Oppression, he said, was good no where, but certainly was more tolerable from those to whom the oppressed were accustomed to bow. [Letters of Mr. Middleton of the 4th and 7th of December 1781, were then read, by which it appeared that he (Middleton) had ordered the regent Purnanah, but before they could be issued, received a message from the Nabob, requesting the delay only of a few hours, and that the thing should be done in his own name; but this Mr. Middleton refused, and issued the Purnanahs himself.]

"Here," exclaimed Mr. Burke, with strong marks of emotion, "was an act of tyranny and usurpation unexampled in history! Have your Lordships ever found in the annals of tyranny, or the histories of popular tumult in deposing Princes, any act to equal this? A Monarch deposed by his pretended Allies, trampled under foot

"by the slaves who before abjectly crouched at his feet, and the means of whose existence were drawn from his bounty, and himself rendered, by one flagitious stroke, the greatest slave and the poorest man in his own dominions. All men possessed of the principles of common honesty, must be roused to indignation at such a recital, but your Lordships, more sublimed to honour, must run before me in my feelings on this transaction."

The confiscation thus executed, the whole was handed over to Middleton, who again, on his part, handed it over to the usurers of Benares, and thus a body of foreign usurers were put into possession of the estates of the principal people of the country.—Middleton said, that the debt would be paid by these means in the space of two years; but would it not be better, Mr. Burke asked, to suffer the estates to remain with their real owners, and compel them to give security to the Bankers of Benares? But, no! Mr. Hastings willed it, and the unfortunate people were to be turned out without the means of existence:

Sic volo, sic jubeo, stat pro ratione voluntas.

* * *

In order to sum up every thing that could be said of the atrocity of this act, Mr. Burke proceeded to shew their Lordships the horror with which it struck every body save Mr. Hastings; Middleton himself,

Albeit not used to the melting mood,

relented, and wrote in terms of commiseration for the unhappy people to Mr. Hastings; who, however, felt himself superior to such vulgar feelings—"borest black disdained to change its colour." He, with all the stern rigidity of a Stoic, spurned from him pity in such a virtuous cause: that *Cato* of peculation, fraud, and tyranny, would not relent, but insisted upon the rigorous execution, even to the letter of the confiscation; and if Middleton had not nerves to execute it, he himself would have gone in person for that purpose; and thus, said Mr. Burke, the prisoner argued,—"*I am afraid to go home without money; I went to rob in Benares, and failed there; I must get money elsewhere, or I cannot meet the Parliament of England;—are you equal to it, says the great Robber to the little one? If not, I, the great Master of Tyranny, will fly on the painful wings of Ruin, and put to shame the poor, stealing nature of your bears.*"

—Infirm of purpose!

Give me the daggers.—

My

My hands are of your colour, but I shame
To wear a heart so white.

This great man could not, like Satan, see the glories of the world; but worse, looked over the naked waste that himself had made, and could not see one single shilling that he could by fraud or violence attach; all was hid, and buried under, when he got there.—He then recollected one great family, the women of which had, in three or four successive reigns, amassed, by saving it from their incomes, a large sum of money, and had it secured under the guard of a fortress, and a treble security of the manners and laws of the country;—but these were but slender impediments to the violent passion of the Prisoner, for as *Jupiter* made love in a shower of gold, so he made love for a golden shower, not in gold at the person, but at the person for the gold.

Having first resolved to seize on those treasures, he was at a loss under what pretext to justify such a violation, not only of the right of the parties, the laws of the country, the decency to be observed to persons of the female sex by the customs of the country, but of a treaty by which the British Government had guaranteed that property to them. At length he hit upon an expedient more atrocious even than the original intention; and, partly by stratagem and partly by force, made the Nabob enter into his plan, and become the instrument of violation of his mother's property, house, and family. This was no other than to accuse them of rebellion, and under that pretext to confiscate their goods.—And here, he said, it was worthy of remark, that Sir Elijah Impey (who by his sacred office was bound to protect, yet was made the instrument of this act of injustice) never was consulted upon the point of law by Mr. Hastings, although he was continually with him, for—

Phoebe went with him wherever he went.

No, Sir Elijah did very well for a common messenger, for a tipstaff, or to take an affidavit; but, upon a point of law, was no fit to be consulted, though Chief Justice of India: neither had Mr. Hastings thought proper to consult the native Chief Justice—he consulted neither, but employed both in the execution of this abominable project, contenting himself with putting the question hypothetically.—“Supposing the Begums are guilty of rebellion, has not the Nabob a right to confiscate their property?” To which Sir Elijah said, Certainly; and thus, between them, they

contrived to conform to the old legal maxim—*Ad questionem facti non respondent iudices, ad questionem legis non respondent juratores*. Mr. Hastings assumes the province, and exercises the right of the Jury, and finds the fact; and Sir Elijah, in his character of Judge, applies the law, and thus between them was this infamous transaction complicated.

Mr. Burke said, that the Hon. Manager who had preceded him upon this Charge had gone so very fully into the subject, that it was hardly necessary for him to say more, than that to accomplish his purposes, a variety of the meanest stratagems, most violent outrages, and enormous cruelties were practised upon these unfortunate women, until at last he discovered where their hoards lay, upon which occasion Mr. Middleton, with all the raptures of a lover, in amorous transports and cooings, writes to his *dear* Sir Elijah Impey that he has got at the object of all his wishes, the secret hoards of the old ladies.

But even the acquisition of those immense treasures could neither satiate the avarice, nor even give a momentary check to the cruel disposition of the Prisoner, for he had an assay made of the treasure, and finding that it fell short by sixty thousand pounds of the sum upon which he had fixed his mind, he extorted from the Eunuchs, who were the Ministers of the Begums, bonds to the amount of that deficiency.—The moment the bonds were obtained, those unhappy victims were dragged to a prison, and a prison of all others the most dreadful to them, viz. the English torturers of Chu ar. In the dungeons of that fort they were kept, and treated not only with rigour, but with the most atrocious cruelty, laden with heavy chains, and repeatedly deprived even of food. Mr. Burke read some Letters from Major Gilpin, who had the command of the fort, to Middleton, in which he states the miserable situation of his prisoners, and requests permission to alleviate in some degree their torments; but Mr. Middleton, instead of affording relief, gave directions for heavier fetters, and, if possible, an increase of torments. The Princesses of Oude, feeling for the situation of their Ministers, parted with all their ornaments and dresses for the purpose of relieving them out of prison; by these means they raised a sum of 40,000*l.* but still they were detained for the remainder.

Mr. Burke then proceeded to shew the gross improbability of the Charge of Rebellion which had been made against the Begums,

begin, and said, that if it were even probable, the evidence which the Prisoner had brought to prove it would shew its falsehood.

But allowing for a moment the truth of this accusation, what did it prove? Why, that the tyranny of the English was so intolerable, that even cloistered old women conspired to cut off a man, who stood in

the relation of son to the one and grandson to the other, rather than not get rid of the British oppression.

Mr. Burke proceeded in recapitulating the material points of his speech on the preceding day; the result of the whole was said to be, that the dominions of the Nabob of Oude were utterly ruined by Mr. Hastings*.

O

* The following facts however, to which the Editor appeals, will prove that the ruin of the Provinces of Benares and of Oude consists only in the imagination of Mr. Burke.

And first, The evidence on the BENARES Article proves, that when Cheyt Sing was expelled in 1781, Mr. Hastings raised the public revenue of BENARES from 230,000l. to 50,000l. a year: that this increased revenue has been regularly paid from 1780 to 1793, and that there is no sort of doubt of this increased revenue being regularly paid in future; that the country has flourished eminently since the expulsion of Cheyt Sing; that BENARES has considerably increased in building and in population since the expulsion of Cheyt Sing; that the Police, established by Mr. Hastings, in Benares, has rendered that city the first in India. To this clear, decided, and undoubted evidence, Mr. Burke opposed a Letter, written by Mr. Hastings in 1784, in which he stated, that by the bad management of the Aumil after a very heavy drought, the country had been greatly oppressed, and that in the line through which he marched, from Buxar to the extremity of the BENARES Province, the natives had deserted their villages, owing to the neglect of the Aumil.

The next was a report from Mr. Duncan, in 1788, who says, that some Pergunnahs had fallen off since the expulsion of Cheyt Sing.

Now Mr. Burke rejects all evidence from Gentlemen of all descriptions; rejects the solemn assertions of the People themselves; rejects the Public accounts; rejects all that his friend Mr. Dundas has said of the flourishing state of Benares; and insists upon it, that Mr. Hastings and Mr. Duncan have proved, that the Country is utterly ruined.

The same mode of stating facts which distinguished Mr. Burke when he told what passed in a large company, when the late Lord Dover was present, distinguished him in relating passages from the letter of Mr. Duncan and Mr. Hastings. He read what the former Gentleman said of the state of some trifling Pergunnahs; and from that partial statement, he argued, that the whole Province of BENARES was ruined inevitably; that Province from which the Company has received 400,000l. a year, from 1782 to this day.

He read parts, or rather he desired Mr. Windham to read part, of a letter from Mr. Hastings, in which he represented the consequences of an alarming drought, and the bad conduct of the Aumil when joined together for one year: but when Mr. Windham came to the following parts of the same letter, Mr. Burke desired him to stop; we shall therefore insert it in this place.

"I have the happiness to find all men satisfied and happy in the excellent administration of the city of BENARES, and have experienced what few men of the first station have known in the intercourse with the natives of India, if of any other country, the voice of adulation, divested even in my own presence, from myself in the eagerness of bestowing a better merited praise upon another. Such is the tribute which the wisdom and integrity of Ally Ibrahim Cawn have extorted from the hearts of those who have been subject to his jurisdiction."

Secondly, the facts respecting the Province of Oude are nearly as follow:

In January 1775, Sujah Dowlah, Nabob of Oude, died, and was succeeded by his son, the present Nabob. It was determined by the Government of Bengal, in opposition to the opinion of Mr. Hastings, that the treaties subsisting between Bengal and Oude expired with Sujah Dowlah. They, therefore, compelled the Nabob either to give up all connections with Bengal, or to consent to increase the Subsidy which he paid for a Brigade of British troops, from 21, to 26,000l. a month; and also, to cede for ever to the Company the Province of Benares.

Mr. Burke defended this act, though Mr. Dundas described it, as it certainly was, a mostagrant breach of a Solemn Treaty. The Directors concurred in opinion with Mr. Hastings, that the Treaty with Sujah Dowlah did not expire at his death; but they were well pleased

On the following day, JUNE 11, being the ONE HUNDRED and FORTY-FIFTH DAY, Mr. Burke recapitulated what he had said on the preceding day, and then went into a very strong and pointed attack upon the testimony and conduct of Sir Elijah Impey, a Member of the House of Commons, and upon the several Gentlemen who had been employed in Oude.

He went through the Begum Charge in part; contended that it was *impossible* she should have been in the Rebellion in the year 1781; that the whole was a story invented by Mr. Hastings as a plea for seizing her treasures; and offered as a proof of it, that the Directors had sent the most positive orders for instituting a particular enquiry into the truth of the accusation.

pleased by the increase of the Subsidy, and the acquisition of Benares, both of which resulted from the intimate connection formed by Mr. Hastings with Sujah Dowlah, in the year 1773.

At the latter end of the year 1775, such was the distress of the Nabob, and such the confusion in his country, owing to the Begum withholding his father's treasures, which left an army of one hundred thousand men many months in arrears, that the Nabob was persuaded by Mr. Bristow to apply for British officers to command his forces. The request was complied with, and a number of officers were sent to Oude upon emoluments and allowances infinitely beyond any that were enjoyed by the Bengal army. Mr. Burke misrepresents this matter so completely, that any person who heard him must have supposed that Mr. Hastings formed this arrangement, whereas it was in fact done by the majority, Messrs. Claverings, Monson, and Francis.

This Nabob had Aid-de-Camps, Secretaries, Adjutant and Quarter-Master-General, Paymaster, and Commissaries, with their Deputies.

The Nabob had no money, and was unable to pay these new military and civil establishments, or to discharge what was then owing to the Company. He therefore assigned certain districts to Mr. Bristow, who, in concert with the Minister, was in truth the Sovereign of Oude, a fact stated by Captain Edwards, who swore that the Nabob was in a state of subordination to all the Residents alike. In other words, and in another passage, he said, that the Nabob's Minister, who was under the influence of the Resident, entirely governed the country. Such was the system established in 1775 by the majority, and this system continued under Mr. Bristow first, then under Mr. Middleton, or Mr. Purling, until September 1781, when it was in some degree altered.

In 1784, Mr. Hastings made an arrangement with the Nabob, by which it was agreed, that if the Nabob discharged the debt then due to the Company, and if in future he regularly paid the subsidy due for the British Troops, no Resident should have the slightest interference in his dominions. This arrangement, which Mr. Burke has quarrelled with, as he does with every thing, was very fully approved by the King's Ministers, and was ordered by them, to be invariably adhered to. It has been so, but still we exercise a superintending power in Oude, precisely similar to that which was exercised by Mr. Hastings. Lord Cornwallis, who, on all occasions speaks and acts as a man of honour, was unwilling that his countrymen should undergo the scandal of being the authors of disorders with which they had nothing to do, and wrote to the Directors, "That the Disorders in Oude are to be traced in the character of the Prince," whom he describes as very extravagant, and utterly averse to business of any kind. His Lordship therefore protected the Minister, Hyder Beg Khan, against the Nabob, and as often as the Nabob seemed disinclined to act agreeable to the wishes of the Minister, Lord Cornwallis has remonstrated, and the evil was redressed. When this Minister died in 1792, the Nabob waited to know the pleasure of Lord Cornwallis, before he appointed a successor.

From 1773, when Mr. Hastings formed the first arrangement with Sujah Dowlah, to this time, we have received above seventeen millions sterling from Oude. Oude has, in fact, paid above one third of the annual expence of the Bengal army, independent of the large sums in bullion remitted to the Treasury in Calcutta, which enabled us to preserve India, in the last general war.

We have proved, by a reference to facts which are of general notoriety, that the system which led to our first interference in the internal Government of Oude, was not the system of Mr. Hastings, but of General Clavering, Colonel Monson, and Mr. Francis. Justice to those gentlemen induces us to declare, that no such mischievous consequences as Mr. Burke states, did result from that interference.

The Military Farmers General, as Mr. Burke calls them, guarded the extreme Provinces of the Nabob's Dominions, countries which Mr. Bristow described, before these officers were appointed, as in such a state of anarchy and rebellion, that they could hardly be said to make part of the Nabob's dominions; under these Military Farmers General, the countries were

accusation against the Begum; which orders the Colleagues of Mr. Hastings would have carried into execution, had they not been over-ruled by Mr. Hastings. This subject occupied Mr. Burke for a considerable time; and in the course of this speech he applied so many coarse epithets to Mr. Hastings, that at length the latter started up, and declared that the Directors had sent no ORDERS for instituting the enquiry mentioned by Mr. Burke, and that human nature must at last be exhausted by hearing such gross falsehoods so often repeated.

Mr. Burke appeared a little confounded; but recovering himself, said he hoped the Court would not permit that wicked wretch, that scourge of India, that Criminal, to insult the House of Commons.

After some time, Mr. Windham said the best way would be to read again the orders of the Directors for the enquiry alluded to by Mr. Burke.

The letter was read, and it appeared there were no orders; the term was a *re-quest* *.

ON THURSDAY, JUNE 12, being the ONE HUNDRED and FORTY-SIXTH DAY,

much better governed than they had been before or since, and revenues were collected, and brought into the Treasury at Lucknow, from districts which before those officers were appointed had paid nothing to the Nabob.

* As this is a matter of a most delicate nature, we shall merely state the facts to which the orders of the Directors applied—the Orders themselves—the Minutes that followed them, of which parts only were read by Mr. Windham—and leave the world to form their own conclusions.

In July 1782, the Directors were informed, that in consequence of the support given to Cheyt Sing, the guarantee of the Company had been withdrawn from the Begum; that Mr. Hastings had strenuously encouraged and supported the Nabob in refusing the Jaghire, and in seizing the treasure of the Begum. They were informed that all the treasure taken, amounting to 500,000l. had been applied to the discharge of the debt due by the Nabob to the East India Company.

The Benares Narrative and the Affidavits were sent home by the same conveyance, and arrived in July 1782.

The Directors answered these advices on the 14th of February 1783.

The Managers gave the answer in evidence in 1788, and prefaced it with these words:

“Then the Managers acquainted the House they would next proceed to shew that the Directors did order an enquiry to be made in India, into the conduct of the Begums, that all the world might know the real truth of the case, and that Mr. Hastings did stifle that enquiry.”

The Letter is then entered by the Managers in page 920, and the Answer in these words:

“If it should hereafter be found that the Begum did not take that hostile part against the Company which has been represented as well in the Governor General’s narrative as in the several documents therein referred to, and as it no where appears from the papers at present in our possession, that they excited any commotion previous to the insurrection of Cheyt Sing, but only armed themselves in consequence of that transaction; and as it is probable that such a conduct proceeded entirely from motives of self-defence, under an apprehension that they themselves might likewise be laid under unwarrantable contributions, we direct that you use your influence with the Vizier that their Jaghires may be restored to them.”

Here is the order, and the point in dispute is, whether this be an order for enquiring into the truth of the Rebellion of the Begums, or whether it be an order to use the influence of the Bengal Government to restore to her her Jaghire.—As to the Treasures, the Directors are totally silent on that subject; yet it is obvious, that if an enquiry was ordered, and if in the result of that enquiry she should prove to have been falsely accused, on what principle of justice or common sense could the Directors have passed over the Treasures?

The Government consisted of Mr. Hastings, Mr. Wheeler, Mr. Stables, and Sir John Macpherson.—After the Letter of the Directors had been read, Mr. Wheeler stated his wish always to conform implicitly to the orders of the Directors; that those then before them were entirely provisional; that he was fully convinced, not only from the report of Mr. Hastings, but from the opinions of many individuals totally unconcerned in the subject, that the Begums at Fyzabad did take a hostile part against the Company during the disturbances at Benares. But as the Directors appeared to be of a different opinion, and conceived upon the subject that there ought to be stronger proofs of the defection of the Begums than had been laid before them, he thought that before they decided on these orders, the late and present residents should collect all the information they could upon the subject.

DAY. Mr. Burke took up the remaining part of the Begum Charge, namely, the treatment of the women and children of the late Nabob Sujah ul Dowla, and the seizure of the treasures of the Begums, the imprisonment of her Ministers, and loading them with irons, to give securities for large sums and pay the same, stripping the effects, cloths, jewels, &c. from the Begums, by which means the numerous family in the Khord Mahal (inner palace) which was dependent upon the Begums, wanted the mere necessities of life; and after fruitless supplications and shrieks of famine, they endeavoured to force their way out of the Palace, and break into the Market-place to beg for bread, but were driven back with blows by the Sepoys, who were armed with bludgeons. Several letters were read, written by Major Gilpin,

Mr. Bristow, and Mr. Middleton, in order to fix the guilt of these transactions upon the Defendant. Mr. Burke concluded this Charge with an affecting appeal to the feelings and the passions of their Lordships.

The principal occurrence of the day was an attempt to comment upon Charges, as collateral matter, which had been abandoned by the House of Commons in a vote on the 4th of February 1791.

The Lord Chancellor checked this informal procedure, and signified his opinion, that what was not insisted upon in charge, could admit of no comment in reply.

Mr. Burke retorted this extraneous adduction upon the Counsel, who had, he contended, also brought matter irrelevant in their defence.—But he desired

If there be *sense or meaning in language*, Mr. Wheler said, Before I consent to intercede with the Nabob for the restoration of their justices, I desire to know what has been their past and present conduct.

Mr. Hastings replies, that he thinks Mr. Wheler has mistaken the intention of the Directors; that he sees nothing like an order *expressed or implied* for such an enquiry as Mr. Wheler proposes—Here the matter drops till the 22d of September, when a minute from Mr. Stables is read, in which *he* says, that the Directors *seem not to be satisfied* that the dissatisfaction of the Begums is sufficiently proved. He *therefore* thinks that the late and present Resident should be called upon to collect what further information they can, and the Commanding Officers who were at the time in the Vizier's country.

If there be any meaning in language, Mr. Stables did not make this motion in compliance with an order, but because he thought the Directors seemed not to be satisfied with the information before them.

Mr. Hastings appealed to the letter. He says it does not order an enquiry; but adds, if evidence is to be collected, it should be collected from all persons capable of giving it, and not confined to official characters.

To this minute Mr. Stables made no reply.

Sir John Macpherson (whose minute Mr. Windham did not read, though it follows immediately) says, "I have read the letter of the Directors with attention. When it was first read in Council, I understood the paragraphs about the Begums as directing an investigation," &c.

"On a close attention to the words and spirit of the different paragraphs upon this subject, I do not think that we are directed to commence any new investigation of evidence. Indeed, I do not see how any new investigation of evidence could be regularly undertaken, or what salutary purpose it could answer."

"There has been no appeal from the Begums to this Government; and there certainly was sufficient proof, at the time, that those who had the management of their concerns during the troubles of Benares, were no friends, but real enemies to the cause of the English."

We hope we may be allowed to say, that Mr. Hastings would have been unpardonable in interrupting Mr. Burke, and accusing him of falsehood, provided Mr. Windham had read all the Minutes. We think there is no man living can say, that Sir John Macpherson's minute is not very material indeed. But though Sir John was in London in 1788, when the Managers examined Mr. Stables, they did not chuse to call Sir John Macpherson; and though his Minute is in the next page to that of Mr. Stables in the evidence, Mr. Windham did not think proper to read it. Mr. Burke did not say he meant to garble the evidence, but he certainly did garble it, and this is the only excuse that can be offered for the intemperance of Mr. Hastings.

to withdraw a few minutes with his brother Managers. Mr. Windham attended him out, and Mr. Francis followed.

When they returned, Mr. Burke lamented very feelingly the hardship of his situation—but he said he was bound to believe he heard the judgment of that House, when no one Peer arose to dissent from his Lordship, to whose single opinion, indeed, great weight was always attached, and to which he very cheerfully deferred.

However, the facts he alluded to were upon the Journals; they were in the

Managers record, and in that of the Counsel; and tho' abandoned in charge, yet, as assented to by Mr. Hastings, would remain for ever evidence against him.

Mr. Windham read a variety of Papers, and Mr. Burke commented at considerable length. Hyder Beg Khan brought forth a violent storm of invective, and the business of Oude was closed by Mr. Burke's declaration, that he believed that province to be as much now as heretofore *gov. ned* by Mr. Hastings*.

Mr.

* In the course of his Speech, Mr. Burke took occasion to say, as on a former day, (p. 130.) that the *origin* of Mr. Hastings was *low, obscure, and vulgar*; with how little regard to *truth* this assertion is made by those who detail his Speeches, will appear from the following account of the family of Mr. HASTINGS, which is taken from Dr. NASH's "History of Worcester-shire," and the Records in the Heralds' Office.

In the reign of Henry the Second, Milo de Hastings held three hides of land of the Bishop of Worcester. This Milo de Hastings, or another person of the same name, was of Daynesford, the 33d of Edward the First.

Mr. Pennyson Hastings, an Antiquary, and Rector of Daynesford, derives the pedigree of this family from Hastings the Dane, in a letter to Dr. Thomas, dated the 11th of December 1732. It certainly may boast of great antiquity. Astroppe Hastings held lands in Warwickshire so early as the Conqueror, or very soon afterwards. Of this family were the Barons of Abergavenny, who, by the marriage of John Hastings, Baron of Abergavenny, with the heiress of Acomar de Valentia, came to be Earl of Pembroke, John the last Earl leaving no issue, his Earldom reverted to the Crown, and the Barony of Abergavenny went by marriage to Reginald, Lord Grey, although the right of it was long contested by Mr. Hastings, the male heir, descended from the second son of John Lord Abergavenny.

From a younger branch of this family sprung the Earls of Huntingdon, who have altered the Arms, and bear a Manche Sable in a Field Argent; whereas the original Arms of Hastings, and those which have always been borne by the Hastings of Daynesford, were a Manche Gules in a Field Or.

Daynesford continued in the family of Hastings till 1715, when it was sold by Mr. Samuel Hastings to Jacob Knight, grandson of Sir John Knight, of Britton.

From the son of Mr. Knight, it was re-purchased by Mr. Hastings in 1789.

At Daynesford was first introduced the cultivation of Saintfoin, a French grass, brought into England by John Hastings in 1650.

The ancient Manor-house, which has long been destroyed, was situated at the distance of 150 yards from the church. The ruins were left about a century ago, and shewed it to have been a grand structure.

From the time this house went to decay, the family chiefly resided at Yelford, in Oxfordshire, called, in old writings, Yelford Hastings; and in the visitation of that county, in the last century, a particular account is given of that family.

Yelford continued to belong to them until the reign of Charles the First, when John Hastings, having spent four manors in defence of the King, conveyed Yelford to the Speaker Lenthall to save the rest of his estate.

This John Hastings was the Great Great Grandfather of Mr. Hastings, whom Mr. Burke is supposed to describe as of an origin *low, obscure, and vulgar*.

The following persons of the name of Hastings, possessed the Estate of Daynesford, and the patronage of the Living, as appears by Dr. Nash's Survey:—

Thomas de Hastyngs	?	-	?	A. D.	1283
Rolandus de Hastyngs					1325
Thomas de Hastyngs, Dominus de Da, Inesford					1335
Thomas Hastynges					1419
Edward Hastynges					1466

John

Mr. Burke then proceeded nearer home, and having historically painted the three classes of inhabitants at Bengal, he considered what measures Mr. Hastings had taken to augment the wealth, secure the territories, and moderate the government of the Mahomedans, the landholders, and the Company's servants.

Mr. Burke, after a few more obser-

vations on Oude*, said he had some new matter to offer to their Lordships on the next day they would honour him with their hearing; and on this the Court adjourned to

SATURDAY, JUNE 14, being the ONE HUNDRED and FORTY-SEVENTH DAY.

Mr. Burke began this day's summing up with the latter part of the Sixth Article of Impeachment, and the whole of the

John Hastings	-	-	-	-	1525
Symon Hastings,	-	-	-	-	1593
John Hastings	-	-	-	-	1646
John Hastings	-	-	-	-	1661
Penyfton Hastings	-	-	-	-	1690
Samuel Hastings	-	-	-	-	1701
Warren Hastings	-	-	-	-	1789

From this account, which is authentic, it is clear, that from the year 1281 to 1715, a period of above four hundred years, the Estate of Daynesford continued in the family of Mr. Hastings, though the fortune of the family was considerably diminished in 1651, by the attachment of his Great Great Grandfather to Charles the First.

This detail would be unnecessary, for any other purpose than to shew the illiberality of those whose malignity can never be glutted. When Lord Clive was an object of persecution, he was defcribed, as Mr. Hastings has been, as sprung from a low and obscure origin, though the Estate of Syche, in Shropshire, was in his family from the time of William the Conqueror.

* There were two very curious points in this day's Speech, on which we shall make a few observations.

The first was, where Mr. Burke said, that this country had a particular interest in the good Government of India, since the Public were to receive from the surplus revenues of India in future five hundred thousand pounds a year. How Mr. Burke could venture to allude to this law is indeed astonishing.

It passed in the last Session; and though Mr. Burke had solemnly pledged himself to oppose with his utmost force every attempt to perpetuate the present oppressive and corrupt system by which India is governed, he actually absented himself as often as that Bill was under discussion in the House. It has passed, and it is grounded upon data which are death's blows to the Impeachment; for it is assumed that we have a right to all we possess in India; and it is assumed, that the revenues in future will be equal to what they now produce. If Mr. Hastings has been justly impeached, heavy indeed are the demands which the Princes of India have upon England, for the public robberies of Mr. Hastings; and very considerable must be the annual deductions from the future revenues of India.

The second is a point, which tho' not immediately respecting Mr. Hastings, proves, that Mr. Burke has omitted no means to obtain information; and as he has procured none, it establishes most clearly the assertions of Colonel Duff, that India is united in his favour.

Mr. Burke said, he had received a letter from Mr. Britton, in which that Gentleman affirmed, that one of the Eunuchs of the Begum had suffered corporal punishment at Lucknow. It is proved in evidence, that Mr. Hastings neither directly nor indirectly authorized such a punishment, nor was he ever acquainted with this circumstance. The fact undoubtedly is, that if the British Resident had not interfered to prevent it, the Nabob would have put these Eunuchs to death; Mr. Hastings knew nothing about them. The material question, and the only one in which he is concerned is this; "Was it right or wrong in him to withdraw the Guarantee of the British nation from the Begum, and to advise the Nabob, to take from her certain sums of money, for the purpose of liquidating the Public Debt, &c which he owed to the company?"

The supposed cruelties to the Eunuchs, the supposed distress of the concubines in the Khord Mahal, Mr. Hastings cannot be responsible for; Major Gilpin and Captain Jacques have fully proved, that he neither knew of the one or the other. But the curious point is this, that though Mr. Burke has left it out, that he has been carrying on a secret correspondence in Bengal, he has not been able to excite the Begum, or her Eunuchs, or any human being to complain of the tyranny, oppression, injustice, or cruelty of Mr. Hastings.

seventh,

Seventh, which relate entirely to the peculations, frauds, and embezzlements charged to have been committed by the Defendant in the extensive provinces of Bengal, Bahar, and Orissa. He said Mr. Hastings had despoiled the Nabob of Bengal, like an ancient knight, of all his armour—his helmet—his hawbeck—and at last cut off his spurs—that he afterwards restored him to all his privileges, for the purpose of again bringing into power that infamous, corrupting, and corrupted wretch Munny Begum; that he made her Chief Justice, and the country was again given up to murderers and robbers—that he set up the country gentlemen to auction, and put his own domestics in possession of the estates of the Nobles of the country.

Having dwelt for a considerable time on these points, he passed to the Seventh Article, respecting the collection of the revenues of the above provinces, which were granted to the Company in 1765 by Naw Alum, the Great Mogul; in alluding to which, Mr. Burke alternately soared into the heights of sublimity and frequently sunk much below mediocrity. A proof of the latter was the comparison of Mr. Hastings with the keeper of a *pig-stye* wallowing in filth and corruption. Speaking of Mr. Hastings' promise on his appointment to extirpate the system of corruption in India, he said, on the contrary he had opened its flood-gates more widely, and in such a manner as to preclude all possibility of a reform:

—————"Like Sin and Death,
"Who op'd the gates of Hell, the which
"to *sub*
"Excell'd their power!"

Of Mr. Hastings's *disobedience* to the Company's orders, Mr. Burke said, "it was with an *elastic spring* in proportion to the *pressure* upon it."

The Manager's principal object this day was to criminate Mr. Hastings on account of the appointment of the Begums, and the conduct of Sir John D'Oyley. He stated that Sir John D'Oyley had sent no accounts to Calcutta of the expenses of the Nabob, and that he had refused to answer questions in the Committee of Secrecy, because the answers might tend to criminate himself. He charged the Governor-General with having set up the public appointments to sale. He made

some very sarcastic similes as to the connection between Mr. Hastings and the Begums, quoting *Dean Swift's Progress of Love* as applicable on the occasion.

The humour touching the Munny Begum flowed something in this way:—
"Age has its comforts—the consolations of debility and ugliness may be found in brandy. The old lady had therein a monopoly. She was a great dealer in the article. But mark the transition—
"A youth of sentiment and love; an old age reposing upon the brandy-cask."

He then ironically adverted to the perverse passions of great men for trumpets. "Antony had his Cleopatra, and Mr. Hastings his Munny Begum.—It might be so; for aged, shrivelled, bony deformity had its relish for some palates: but, good God! no man ever fell in love with his own Banyan!"

Mr. Burke exerted all his severity upon the shameful practice of sending out youth to repair the honours of shattered nobility *here*, by the plunder of the East. [By the bye, this is the best ground for defending Mr. Hastings.]

To the general remark, that *we should hate the Crime but love the Criminal*, he replied, "it was a false and pernicious maxim.—Some vices were their own punishment; the evils of ambition but few could imitate; but those of peculation were open to the million. O, but we should punish the crime and pity the criminal! What, am I to love Nero?—Is Caligula to have my cordial esteem?—Am I to take Domitian to my bosom?—No; I hate both the Criminal and the Crime, and it is virtue to do so."

Mr. Burke next went very slightly through the Contracts; the abolition of the Provincial Councils and Gunga Govind Sing;—he then went back to Oude, and came back again to Bengal, to what he called the bribe of the entertainment—that is, the sum of two thousand rupees a day, paid to Mr. Hastings while he was at Moorhedabad in 1772.—Mr. Burke then said, that if the Lords would attend him one hour on Monday, he would finally close; upon which the Court adjourned to

MONDAY, JUNE 16, being the ONE HUNDRED and FORTY-EIGHTH DAY.

Mr. Burke began by an allusion to a speech of one of the Counsel, whom he accused of taking improper liberties, and

he then mentioned an epigram*, of which the same gentleman was the supposed author.

As it is in proof, that the sum of 2000 rupees a day received by Mr. Hastings in 1772, was for entertainment, agreeably to established custom, and not a bribe, as charged by the late House for an appointment to office, Mr. Burke took up quite a new ground.—He affirmed that the covenants were made precisely to prevent this sort of abuse.—Here again Mr. Burke fails—for both Lord Clive and Mr. Verelst subscribed the covenants, as well as Mr. Hastings; both those Governors took the two thousand rupees a day for entertainment, without conceiving it to be, as it certainly was not, a breach of their covenants.—Mr. Burke then returned to Nobkissen's present, which he affirmed to be worse than any act of Veres, and applied the epithets rogue, common cheat, swindler, to Mr. Hastings, for having taken that present for the Company.

Mr. Burke next came to Lord Cornwallis's evidence, which he insisted proved Bengal to be ruined.—He then read the 39th section of the act of the 24th of his present Majesty, to prove the oppressions of Mr. Hastings. The Act of Parliament, he said, had declared the oppressions and the oppressor; and addressing himself to the Lords, he said, "You must repeal this act of Parliament, you must declare the Legislature a liar, before you can acquit Warren Hastings."

Mr. Burke then said, that Mr. Hastings had pleaded his merits, which was no answer to a criminal charge, but in fact, every act which he stated to be meritorious, had been condemned by a former Parliament; Mr. Dundas having moved forty-five Resolutions, each of which condemned some act done by Mr. Hastings. Every one of those, said Mr. Burke, not excepting one of them, were all censured by the House of Commons.

Mr. Hastings admits this statement to be true, and told the House of Commons he did so; at the same time that he complained of the cruel injuries he suffered by that body having censured and prosecuted him in one character, for acts which in another they had very fully approved, and of which they continued to enjoy all the benefit.

Mr. Burke next affirmed, that Mr.

Hastings was the author of the Mahratta war, and that he concluded it by a dishonourable peace.

After dwelling with considerable energy for a long time on the Charges in the gross and detached parts, he, at last, said he was come to his conclusion; but before he quitted the box, he should beseech their Lordships attention for a few moments.

Mr. Burke then made a solemn pause, and gave his PERORATION, the beauty, energy, and simplicity of which was never exceeded, if indeed equalled.—We can only give a faint idea.

"My Lords, the Commons wait the issue of this cause with trembling solicitude. Twenty-two years have they been employed in it, seven of which have passed in this Trial. They behold the dearest interests of their country deeply involved in it—they feel that the very existence of this Constitution depends upon it. Your Lordships justice stands pre eminent in the world, but it stands amidst a vast heap of ruins, which surrounds it in every corner of Europe. If you slacken justice, and thereby weaken the bands of society, the well-tempered authority of this Court, which I trust in God will continue to the end of time, must receive a fatal wound, that no balm can cure, that no time can restore."

Here Mr. Burke entered into a comparison between the dignity and justice of the High Court and the late Parliament of Paris, the death-blow to which was given by Mirabeau. He next alluded to the miserable state of France at the present moment—to the murder of the best of Kings, and the most glorious of Queens, and to the destruction of the Parliament of Paris, a Court almost as dignified as that which he was then addressing, and uniformly pure in its legal decisions—to the destruction of all ranks and orders in society; and after praying that Heaven would avert from us the miseries that have desolated France, he said, that it should be their Lordships lot to submit to the axe of the guillotine, on any future and dreadful convulsion, their last hour would be more tranquil from a reflection that in the great cause before them they had decided by the rules of equity and justice. But, deprecating such a dreadful event, he hoped the noble fabric of this

Of't have I wondered that on Irish ground
No poisonous reptiles ever yet were found;
Reveal'd the secret stands of Nature's work,
She sav'd her venom, to create a B O X X.

Constitution would long stand unimpaired in reputation as well as in strength; and at the same time that it operated as a terror to Tyrants, it would always afford protection to injured and oppressed Nations.

Mr. Burke then concluded his elaborate speech. "My Lords, it is not the criminality of the prisoner—it is not the claims of the Commons to demand judgment to be passed upon him—it is not the honour and dignity of this Court, and the welfare of millions of the human race, that alone call upon you—When the devouring flames shall have destroyed this perishable globe,

"and sinks into the abyss of Nature, from whence it was commanded into existence by the great Author of it—then, my Lords, when all Nature, Kings and Judges themselves, must answer for their actions, there will be found what supersedes creation itself, namely, ETERNAL JUSTICE. It was the attribute of the Great God of Nature before worlds were; it will reside with him when they perish; and the earthly portion of it committed to your care, is now solemnly deposited in your hands by the Commons of England.—"I have done *."

* As Mr. Burke quitted Parliament in the course of this Session, we shall give the debate that took place on the motion of Thanks to the Managers, when it was brought forward by Mr. Pitt.

ON FRIDAY, JUNE 20, Mr. Pitt, standing in his place in the House of Commons, said, he rose to make his promised Motion, for the Thanks of that House to the Managers for their conduct in the Impeachment against Warren Hastings, Esq. When first he intended taking this step, he had considered it as a matter of course, to which he thought no possible objection could have been offered from any quarter of the House; but when he had postponed his motion, upon intimation that it was intended to be opposed, he had set himself to consider what objections could be made to such a measure generally, or to this one in particular. The Impeachment itself had been voted, not only from a conviction that there was sufficient ground to put the party accused upon his trial, but as a terror to those placed in a similar situation in the government of our distant provinces; nor was there any exercise of their power in which the House shewed themselves more majestic than in that protection which they thus shewed themselves determined to afford those parts of the British empire, which, by being thus far removed from their immediate inspection, might be supposed most liable to oppression and plunder. When he looked at the magnitude of the task which they had thus imposed upon their Managers, he could not avoid feeling every thing in their favour, and that a business of such extent, and executed so ably, covered every error they might have committed, if such could be really imputed to them. Where, he asked, could such a charge be stated? Perhaps the length to which the Trial had been protracted might be objected; this was a presumption naturally to be looked for, if we looked either at the nature of the transaction itself, the Charges exhibited upon the occasion, or the evidence necessarily introduced in support of those Charges. Was there any thing in all these which could be fairly imputed to their Managers? On the contrary, it formed the peculiar privilege and advantage of trial by impeachment over the ordinary proceedings in the courts of justice, that delinquencies beyond their reach were to be brought, if deserving, to punishment without the intervention of those legal shackles which frequently arrested the avenging hand of the law in the ordinary forms. This, however, which, instead of an objection, was an argument in favour of impeachments generally, was unnecessary to be urged in the present instance, if Gentlemen, instead of computing the years, took the trouble of analyzing the Trial by the number of days, and the few hours occupied in each day which it had taken up. The next point to be considered was, that of this time, whether more or less, how much of it had been occupied by the Managers, and how much by the Defendant in the several replies, and still further, what additional delay given by the latter, by unceasing and unwearied objections taken on its part to almost every thing offered on the part of the prosecution. To prove this disposition to object to evidence, Gentlemen had but to look to the Report made by their Committee on the causes of delay, and they would find it fully proved. It was in the next place to be recollected, that their Managers had to discuss questions in the course of Mr. Hastings' trial, which they could not tamely relinquish without abandoning the privileges of the Commons, as contradistinguished from the ordinary courts of law. Upon all these grounds, and he trusted the House with him, would by no means be inclined to admit, either that there were any grounds for imputing any delay whatever, or even if there were, that their Managers were to be censured for it. But these objections, true or false, came in the present stage

stage too late. If they were well founded, better they had been made in time, when the correction of them as they arose might have prevented two acts of injustice; rendering the Defendant an object of persecution, and their Managers of delusion, in going on with measures in themselves wrong, but which the silence of that House seemed to sanction. Under all these circumstances, he could see no possible ground of objection to the present motion; those who were of opinion from the beginning, that the prosecution was a just and necessary one, should not now object to its conclusion; those who were originally of a contrary opinion, and adverse to the instituting any proceedings whatever, he appealed to their candour, whether, being in a minority throughout, they ought to expect the House to act in the sequel, as they wished in vain to persuade them to act at the commencement; but rather allow the House to act as was usual in all similar cases. Did they wish for the acquittal of Mr. Hastings? That was an event no longer in their hands, but rested in another place. How then could that wish operate, either as a motive or reason for withholding the usual thanks? Any thing now done in the House of Commons could have no effect upon the Lords—Mr. Hastings must be acquitted or condemned upon legal evidence, and legal evidence alone. It was not a question now, what the House would do if the Impeachment was now to be voted. The whole business was concluded as far as depended upon the House; and not to thank the Managers, would be to depart from usual practice on similar occasions. It was certainly true, that such Gentlemen as had uniformly, throughout the course of the Trial, shewn themselves adverse to the Managers, could not add any thing to the *etwas* of the Managers, by joining in the Vote of Thanks: on the contrary, their dissent would prove it not a business of course, but rather of discrimination; still, however, he could not help expressing a wish that on this occasion the vote of that House might be unanimous. He concluded with moving, "That the Thanks of that House be given to the Managers appointed by them to conduct the prosecution against Warren Hastings, Esq. for their faithful management in the discharge of the important trust reposed in them."

Mr. Dundas seconded the Motion.

Mr. Sumner said, he could not avoid expressing his surprise, that a Motion such as that he had just heard read, should be considered as a matter of course. He said, that he rose with considerable diffidence to oppose a Motion which had been made by the Right Honourable Gentleman, with whom it was generally his good fortune to agree. The Right Honourable Gentleman had supported the Motion with all his talents and with all his influence, but he must add, he had not displayed any great degree of candour in the course of his speech, when he presupposed the objections which would be made from a certain description of Gentlemen in that House, one of whom he had infinite pride and pleasure in declaring himself to be. Mr. Sumner said, he was happy to avow himself a very great admirer of Mr. Hastings; that he looked up to him with every sentiment of regard and affection; but his objections to the present Motion arose from circumstances utterly independent of Mr. Hastings. The Right Honourable Gentleman had said, that Mr. Hastings could not in any shape be affected now by any Motion that could be made in this House;—that the decision was before a competent Court, which could only determine by evidence. Admitting this to be the fact, as he did, still a Vote of Thanks was, in a certain degree, a vote of approbation of the Managers' conduct. Surely the period was too short for the House to determine upon the conduct of their Managers. Seven years had the Trial lasted, and it had been attended with circumstances new and most extraordinary. It was true that on former occasions thanks had been voted, and, as the Speaker had informed him from the chair, before the judgment was pronounced, but certainly not until the verdict was known. In this instance the thanks would be voted many months before the judgment; and tho' any thing that could be construed into an approbation of the Commons would not affect the judgment, there was an indecency in the proceedings which led him to oppose it in the first instance by the previous question.

Mr. Sumner said, that if the time were not improper, he certainly would not oppose a Vote of Thanks to the Managers, *one excepted*, who had faithfully discharged the trust imposed on them, by supporting the specific Charges voted by the last House of Commons. Mr. Sumner said, that he retained the same opinion which he had so often professed of the Charges, which he thought to be ill founded; but it was the duty of the Managers to support them, and he never would be so illiberal as to object to their receiving the Thanks of that House at a proper time, provided they could be given without their bestowing their Thanks at the same time on the leading Manager, who, he contended, had by his conduct disgraced and degraded the House of Commons, and had dared, in their name, to vilify every Gentleman who had had the honour and good fortune to serve his country in India; including in his abuse, all their connections of every description, and applying the odious epithet *gang* to this body of men.—

The Speaker calling out Order, Mr. Sumner said, that if he could find more measured expressions

sions to convey to the House his sense of the misconduct of Mr. Burke, and of the disgrace he had brought upon the House, he would use them; but he would proceed to explain of what nature the Manager's conduct had been, in the hope that it would be as much reprobated by the House, as he knew it was *by all descriptions of persons out of doors*.—The facts that he should detail, the Members in general were ignorant of, for very few indeed had attended; and of all Members of the House the Right Hon. Gentleman below him was the last man who was competent to decide on the conduct of the Managers, his various avocations making his absence from the Trial an act of necessity.—He had too high an opinion of the Minister to think it *possible* for him to have made the Motion before them, had he ever heard the leading Manager in Westminster Hall. Mr. Sumner said, in the light he viewed a Vote of Thanks, he could not possibly assent to it. Did the House know that Mr. Burke had solemnly affirmed, that Captain Williams had murdered Raja Mustapha Cawn with his own hands? He would ask, what authority had the House given to Mr. Burke to make such a charge? Was it decent or honourable in the House to suffer such language to be uttered against any Gentleman, and yet deny to him the means of defending himself? All that man could do was done by Captain Williams: to bring this outrageous calumny to a fair Trial;—he petitioned the House upon it five years ago; the House would not bring a charge that he could reply to; and is the Manager to receive Thanks for daring to charge an English Gentleman with murder in a speech, and there to leave it?—Is this British Justice!

The last House voted twenty Articles of Impeachment against Mr. Hastings; three were gone through in the last Parliament—Barnes, the Begum, and the Pretents. This House, by a formal vote, precluded the Managers from going into any other Articles except the Contracts; and the prosecution was finally closed in the first session of this Parliament. Does the House know, that in contempt and defiance of this Resolution, the Manager insisted on his right to go into the other Articles, and expressly told the Lords, that the Commons had not abandoned them, nor ever would abandon any one of them? Will the House thank the Manager for this contempt of their authority? Does the House know, that the language used by the leading Manager to the Court was in the highest degree disgraceful? that he had the presumption to tell the Court, whether with a view to intimidation, or from the wildness of the moment, that the Commons had not only prosecuted, but they had found Mr. Hastings guilty when they impeached him? that the Lords could not acquit him without proving the legislature a liar?—Is such language to be borne? Is this British justice? Will an English House of Commons approve of such sentiments? What is a solemn Trial by Impeachment but a mockery, a farce, if such language is not scouted by every man who hears it? The leading Manager finding the general sentiments of Gentlemen who have served in India to be strongly in favour of Mr. Hastings, in order to invalidate the testimony of the witnesses, has attempted to blacken and to blast the character of every Gentleman who has breathed the air of Asia. Was this universal abuse necessary in order to convict Mr. Hastings? Is the character and fame of every man to be torn in pieces without a hearing? Is this to be done by the authority of the House of Commons? Are they prepared to adopt at once the extravagant and indecorous substitution of the slang of Billingsgate for the strong energetic language of truth and justice? Will they confer on Mr. Hastings, by this vote, the minor titles of swindler, thief, rogue, shaver, cheat, or the more daring descriptions, tyrant, oppressor, and murderer? "I Charge him," said the Manager, "as a tyrant, oppressor, and murderer in the largest sense of the word." Does the House know, that though Mr. Burke was reprimanded for accusing Mr. Hastings of murder, he repeated the Charge on the very next day, and again repeated it a few days ago, as he says himself, *in the largest sense of the word*? Instead of Thanks, does he not deserve the repentment and the reprobation of the House? Ha, the House ever charged Mr. Hastings with murder! On the contrary, has it not reprimanded the Manager for using such foul language? In his last and closing speech he has dared to say, that he charged Mr. Hastings with murder in the largest sense of the word, and this at a period when he could make no new Charge of any kind without a positive disobedience of the orders of the House. Shall we return him Thanks for abusing so grossly the confidence which the House reposed in him? Did the House mean to impeach every man who had served his country in India when they put Mr. Hastings on his Trial?—The violence of the Manager had spared neither the dead nor the living. Hear, said Mr. Sumner, what he says in his closing speech:

"This cruel tyrant, Hannay, a substitute for a still more cruel and bloody tyrant, Warren Hastings—Hastings says to Hannay, You have sucked blood enough for yourself, now suck blood for your neighbours."

Does this House authorize such language? Colonel Hannay is dead. No part of his conduct is implicated in the Articles on which the cause rests.

Speaking of another Gentleman, the Manager says, "This Balfour, the writer of this
"extra-

" extraordinary letter, one of the military farmers-general employed under Hannay in defending the country." Is such language to be countenanced or endured? What is there in the Charge that applies in the smallest degree to Major Balfour?

Speaking of Major Osborne, the Manager said, " Major Osborne had been dismissed. A court-martial removed him, justly or unjustly I care not, from his situation. There he sits in that box. Who sent him to Oude, to suck the blood the military had spared?"

What is there, said Mr. Sumner, in the Articles on which the Commons rest their case that applies to Major Osborne? The House is degraded and disgraced by the misconduct of the Manager.

" His sapper, worn-down, beaten, cowed, and—I am afraid—bribed colleague, Mr. Wheler." Is this justifiable language to be applied to a man who is no more, when there is no evidence that can warrant such an insinuation? In any stage of the Trial, said Mr. Sumner, such language would be highly improper; but in the last stage of it, after evidence was closed on both sides, to make such remarks was in fact to betray the cause entrusted to him; for he excited no sentiments but those of indignation and contempt, either in the Court or in the audience, by such general and illiberal abuse.

In the same indecent terms that the Manager had mentioned almost every Gentleman who had given evidence on the Trial, did he address the Court. Does the House know, that in offering a piece of evidence which the Court unanimously rejected, the Manager told them that he was addressing an assembly of nobles; that they would not do so foul a thing as to reject the evidence he offered; for if they did, they would ask like thieves in a night cellar!

Mr. Sumner said, he could continue to quote passages from the last speech of the Manager so very offensive to decency, so degrading to the character of the House of Commons, as would shock the ears of every Gentleman who reflected, that as a Member he shared in the disgrace brought upon them all by the Manager; but he trusted he had laid sufficient grounds for the Motion which he meant to conclude with, and would therefore move the previous question.

Mr. Wiggley said, he rose to second the Motion, and very fully concurred in all the observations of his Honourable Friend. But there was another reason which also weighed most forcibly with him; the House was sensible of the clamour which had been raised out of doors, and justly raised, on account of the unprecedented duration of this Trial. The House felt it, and had ordered a Committee to report the causes of the duration of it. The House had good reasons, he presumed, though they did not occur to him, for appointing the Managers to be the Members of that Committee. It struck him, that they were made judges in their own cause, for the fault must be with the Managers, the Counsel of Mr. Hastings, or the Lords.—In the close of that Report another was promised: Was it decent to thank the Managers before any Motion was even made upon the first, or before the second Report, though promised so long ago, was delivered? No precedent of former thanks applied in any degree to this case. The Trial had lasted seven years, and would not be finally terminated until the next session. Let Gentlemen consider the nature of their Managers' conduct before they came forward with a Vote of Approbation. If the Trial had been finished in the first year, the House would have been competent to form an opinion, but the Members had deserted the Hall, and even of the Managers very few had lately attended. At all events, Mr. Wiggley conceived the present to be a very improper time to vote Thanks to the Managers.

Mr. Robinson said, he had been present in Westminster Hall when the leading Manager had, in his opinion, treated the Court with very great indecency. The security of the constitution depended upon each branch of the legislature being kept perfectly distinct, and on its being treated with every degree of respect. As the leading Manager had not acted towards the Court in a manner that became him to act, he should certainly oppose his receiving the Thanks of the House.

Mr. Windham said, that although at first intending not to speak, as being in some degree a party in the question, yet he felt himself relieved from this, by the distinction taken between Mr. Burke and the other Managers; although he was convinced there was not one of them but would be proud to be connected with him in the same and honour of the transaction.—Declaring himself as competent to decide upon what had passed at the Trial as any other person whatever, from his constant attendance, he affirmed, that in every instance quoted by the Member who opposed the Motion, he had been completely mistaken; in many instances attributing to Mr. Burke words never uttered by him, and in others the expressions were so garbled as not to be understood. He, for one, had never conceived, that in speaking upon what the Managers looked upon to be crimes of the deepest dye, they were to observe the courtly language of a drawing-room.

Mr. Francis said, that his intention in addressing the House on the present occasion, was to give his testimony as a witness to certain points of fact. That having attended the Trial with

the greatest diligence, and more constantly, he believed, than any other Member of the House, he was at least a competent witness upon every thing that passed, and that he did not mean to assume any other character in this debate. That, without questioning the Honourable Gentleman's veracity, he did and must dispute the exactness of his recollection on many points; and that even the Honourable Gentleman himself had not trusted entirely to his own memory, having been obliged to refresh it by recurring to a newspaper, to which Mr. Francis well knew that no confidence ought to be given. That he thought the Honourable Gentleman had greatly overstated, and given a very harsh and strained construction, in every instance, to the language used in the pleadings by his Right Honourable Friend;—but that, in some very material particulars, he took upon him to affirm, that the Honourable Gentleman had been grossly mistaken or misinformed. For example, the expression of *Spider of Hell* was never applied by his Right Honourable Friend to Mr. Hastings; it was a quotation from a speech of Sir Edward Coke against Sir Walter Raleigh, and Mr. Burke, when he mentioned it, had spoken of it as a weak and foolish expression; that the words, *a Judge of Hell*, were nothing but a quotation from Virgil,

Cessigatque auditque dolos, subigitque fateri,

which the Honourable Gentleman had thought fit to translate into very vulgar English, and then fixed his own English words upon Mr. Burke. There was another instance, and more material than all the rest, on which he could aver with positive certainty, and would be ready to do so in a Court of Justice, if it were necessary, on which the Honourable Gentleman was most completely mistaken, namely, when he asserted that his Right Hon. Friend had treated a vote of this House (in which some expressions he had used relative to Sir Elijah Impey had been disavowed and disapproved of) with levity and disrespect. This Charge, Mr. Francis affirmed, was not true, and that there was not the smallest ground or pretence for it; that, on the contrary, when his Right Hon. Friend mentioned this vote in Westminster Hall, he did it in terms of the greatest deference and respect, and with a most singular choice and propriety of language; for the truth of which Mr. Francis appealed to Mr. Fox.

Mr. Francis then observed, that Gentlemen who laid such mighty stress on casual expressions, or other little circumstances not essential to the conduct of so heavy and so laborious a business as the Impeachment, should have been particularly cautious in stating the facts with the utmost accuracy;—and finally, that even if it had been true, that any inconsiderate or even passionate expression had escaped any of the Managers, which he was far from admitting, it would be no objection to the Vote of Thanks now proposed. That this Vote expressed nothing but to thank the Managers for their faithful management in their discharge of the trust reposed in them, and neither did nor could be supposed to bind the House to adopt every individual word used by the Managers in their pleadings; and that therefore, unless it could be stated and proved, that their management had been *unfaithful*, which had not been attempted, nor even pretended, the House could not justly refuse their assent to the resolution as it stood proposed.

Mr. Fox, contrary to his intention, found himself obliged to say a few words. He disclaimed all separation between the rest of the Managers and the Right Honourable Member, so eminently qualified, not only by nature, but likewise by his particular study and attention to be, as he was termed, their leader in this business, and with whom it was their boast and glory to be identified. As to the imputation of using harsh terms, he did not conceive, that the Managers were chosen for their capabilities in courtly phrases; and as to persisting to think the fate of Nundomar a murder, if there was any blame in it, it was his, for it was he and not Mr. Burke who had so expressed himself before the Lords, subsequent to the censure passed upon Mr. Burke by the House, and he was yet to learn, how any vote of that, or any other House, however it might controul his words or actions, was to shackle his thoughts or opinions.

Mr. Law rose after Mr. Fox and said, that it was unnecessary for him to say much more than to confirm the statement of his two Honourable Friends, Mr. Sumner and Mr. Wigley, which he did most completely; nor could he suppress his surprize and astonishment at the conduct of gentlemen of character, whose talents he revered, in attempting to excuse the leading Manager, by asserting that, in some instances, his expressions had been misrepresented. Mr. Law solemnly affirmed that they were not; that the English language did not afford expressions more gross, violent, abusive, and indecent than those which the Manager had used. If any passage in his speech could be called sublime and beautiful, it was at best but sublime and beautiful nonsense; at other times his expressions were so vulgar and illiberal, that the lowest blackguard in a bear-garden would have been ashamed to utter them. He was indeed surprized that a Right Hon. Gentleman (Mr. Fox) should condescend to mix his character with that of the leading Manager. Mr. Law said, he had been a very constant attendant upon the Trial, and he had often seen the Right Hon. Gentleman exert his great abilities

abilities in support of the cause assigned to him, and as often exerted in order to correct the follies and the intemperance of the leading Manager. Whatever his abilities might be, he was totally unfit to conduct a public Trial. His violence, his passion, and his obstinacy were unconquerable; and as for his supposed information, it was really astonishing that a man who had been twenty-two years employed in Indian inquiries should still be so very ignorant of India. His prejudices had totally warped his judgment. The feeling of the public, Mr. Law said, would not, and could not be changed by a vote of that House. Many thousand persons of both sexes had heard the closing speech of the Hon. Manager, which had lasted nine days. His expressions could not be mistaken; and he was confident that if the minutes of the short-hand writers were called for, it would appear that the terms he used, instead of being less, were more illiberal, outrageous, and offensive than his Honourable Friends had represented them to be. They were universally reprobated, from the first characters amongst the numerous audience that had heard them, down to the messengers, door-keepers, and guards. In that House, Mr. Law said, Gentlemen would not speak out; but he knew that they condemned the conduct of the leading Manager as much as he did; but observed that he was not to be controuled, and that opposition only made him the more violent. Mr. Law said, the Manager had treated the Court as ill as he had done Mr. Hastings. To the truth of the various quotations, one excepted, which was of an old date, he bore the fullest testimony. The expressions were used in this year, and all of them within a month. The context in no instance could take away from the grossness or illiberality of the expressions. It was disgraceful to the House, and scandalous to the cause of justice, that the most atrocious libels should be uttered against Gentlemen whose conduct was not in question, and who, consequently, could not defend themselves. Amongst the Gentlemen with whose characters the Manager had made so free, there was one very old and intimate friend of his own, Major Osborne, a Gentleman of as fair and honourable a character as any in England, and a man who knew how to defend himself. It was highly unjust in the House, and highly impolitic, to afford their sanction in the slightest degree to any of the abominable calumnies that were uttered. It involved them in injustice, inconsistency, and absurdity. It degraded the national character most unjustly throughout Europe. Barrere in the National Convention had the other day detailed, as fact, an infamous falsehood which party malice had invented many years ago;—he meant the accusation, that the English were the authors of the dreadful famine that raged so fatally in Bengal in the year 1770. At that time, Mr. Law said, he was in Bengal, and he affirmed most solemnly that every exertion was made by the British government to lessen the shocking miseries which the people sustained, not from any mismanagement of the government, which was then in the hands of Mahomed Reza Cawn, but from a failure in the periodical rains; that every civil servant of the Company, every British officer at every military station, and every Englishman throughout Bengal, exerted himself to alleviate the distresses of the people. The most liberal subscriptions were entered into, and every personal exertion used, to procure grain wherever it could be found; yet some modern historians had represented the English as the cause of that famine, and as insensible of the miseries it brought upon the people.

In the same style of misrepresentation did the leading Manager, in the first year of this Trial, introduce a story, which refounded through Europe, to the disgrace and scandal of this nation: he meant the story of Deby Sing. Mr. Law said, that on its being told, he had affirmed that it could not be true. He knew that cruelty was no part of an Englishman's character in any country, and as little so in India as any part of the world. This justice he was sure the Noble Marquis would do to his countrymen; for he was too high and too honourable a character to conceal the truth, because men of great consideration in this country had been misled. The Noble Marquis had shewn himself to be superior to those follies and prejudices which had distinguished so many persons in England.

The leading Manager had implicated a very intimate friend of his in the story of Deby Sing; he meant Sir John Shore, whom the Minister had selected to govern Bengal. He had described that Gentleman as an accomplice in the crimes of Mr. Hastings, and had gone so far in folly as to remonstrate to the Directors on their appointing him Governor-General of Bengal.

Mr. Law said, that when he heard the Manager tell this story with so much confidence in Westminster-hall, he was sure from his own knowledge of the country that the story could not be true; but his regard for Sir John Shore, and his zeal for the honour of his country, induced him to sift the business to the bottom. He went most carefully and attentively through all those volumes which the Manager had in his possession also, and he boldly challenged the most inventive malice of the most malicious man that ever existed to affix blame either upon Mr. Hastings or Sir John Shore for any concern they had in that transaction.

The fact was shortly this: A district was rented for two years to a man of the name of D.

Sing, and let out again by him to under-farmers. This man had been for years employed in the revenue line, and was much esteemed both by Sir John Shore and Mr. Anderfon.

The first year the rents were regularly paid; in the second there were complaints of great severities having been used in the collection of the revenue. The first and the only act done by Mr. Hastings throughout the whole business, was to order Deby Sing to be removed, and that in so hasty a manner, as to expose himself to the charge of having acted with too much severity to him. A Gentleman was deputed to receive the complaints of the natives, Mr. Paterfon, of whom the world has heard so much, and who was so little pleased with the extravagant encomiums of the leading Manager, that he has publicly disavowed him, and as publicly expressed concern that his reports should have been tortured into evidence against Mr. Hastings, who had no sort of concern in the business; but was most anxious to detect the enormities of Deby Sing, and to punish him.

Mr. Paterfon transmitted to Calcutta all the complaints he had received, and amongst them were statements of cruelties practised upon certain of the natives, too shocking to be repeated. These complaints arrived when Mr. Hastings was absent, and the Board appointed a Committee of Company's servants (all senior to Mr. Paterfon, and not junior, as the Manager stated) to sift this business to the bottom. The Commissioners were sworn, and the examinations were taken upon oath. Their commission did not terminate until long after Mr. Hastings was in England; and the result of the fullest examination was, that the most dreadful of the cruelties charged never were committed at all, and that for such severities as were exercised, no possible blame could attach upon any English Gentleman. Such, Mr. Law affirmed, was the true state of the case; and it was a disgrace to the House of Commons that the leading Manager should have travelled out of his indictment, in order to utter his calumnies against Sir John Shore, and the public servants employed in the revenue line.

Mr. Law lamented exceedingly that so superior a man as Mr. Fox, since he had accepted the office of a Manager, had not condescended to examine and to judge for himself before he spoke. Had he ever himself looked into the history of Deby Sing, he never could have justified for a moment the conduct of the leading Manager.

Nor was this, said Mr. Law, the only instance in which the leading Manager had quitted the Articles entrusted to him, in order to indulge the malignity of his own disposition. He had lately described Mr. Hastings as a man of low, vulgar, and obscure origin, whose occupations had been base, mean, and sordid. If it were of any consequence in this free country, and at this period, for a man to value himself upon the accidental circumstances of family, Mr. Hastings might have as fair grounds to boast of his family as any Gentleman in the House. Such topics are ridiculous; but that from such a man as the Manager a word should be uttered on the subject of low, mean, and obscure origin, was indeed most extraordinary, the Manager of all men living ought to have avoided such a topic. Mr. Hastings, the Manager said, had been a fraudulent bullock contractor in the year 1761. This is downright calumny. Where is the Charge voted by the House, or where the evidence that entitled him to make such an assertion? Indeed, said Mr. Law, the Manager, in his closing speech of nine days, wasted five of them upon points that had not the most distant relation to the cause entrusted to him by this House; and the more he considered his conduct, the more was he convinced, that from 1788 to this day, he had systematically, for some purpose or other, delayed the close of the Trial to as late a period as he possibly could, to the abuse of public justice, at a most enormous expence to the nation, and to the manifest inconvenience of all ranks of people. Every thing he had done was for the purpose of delay. The House collectively had not attended, and therefore could not judge; but such Gentlemen as had heard the Manager examining witnesses, keeping some of them four days together, asking questions that had no relation to the points in issue, or putting the same questions over and over again, must be convinced that delay, and delay alone, was his object. No words, Mr. Law said, could convey to Gentlemen who had not heard his closing speech an adequate idea of it—it lasted nine days—two were employed in going through the Benares, and two in going over the Begum Article: a most indecent proceeding, Mr. Law said, in his opinion, and a very poor compliment to the Managers who had well and ably performed their duties; a proceeding that could have no other effect than to weaken the force of their observations.—Such was the universal remark. Another day was wasted in part by remarks on that Article which the Right Honourable Gentleman (Mr. Fox) had enforced by every argument that talents, eloquence, and ingenuity could bring forward, and which well merited the most serious attention of every man. Mr. Law said, though he differed in opinion with Mr. Fox, yet he must affirm the justice to say, that all that man could do to support the cause, he had done. But again the leading Manager must interfere; he must destroy as far as he could the effect

effect produced by Mr. Fox's speech: he went over the ground again, until listlessness, fatigue, and disgust were apparent in every countenance. The remaining four days were wasted by the Manager upon points that had no sort of relation to the Charge, improper at any time to have been agitated, but when dwelt upon in a speech in reply, which ought to be confined to remarks upon evidence before the Court, in the highest degree indecent and irregular. Part of the time was wasted in reading papers that are not in evidence, and in blackening the characters of Gentlemen who cannot defend themselves. What, then, could the Manager mean, but to scatter his calumnies as wide as he could, and to continue the Trial to the latest possible moment he could? Mr. Law said, and it was well known, that he had no sort of connection with Mr. Hastings, and that he had in India disapproved of some of his political measures; beyond this, he had never gone, as an Honourable Member (Mr. Francis) well knew. On political subjects he had differed with Mr. Hastings, but never upon any one of the four points on which this Impeachment rests. On those points he never had but one opinion; and he believed the mind of every fair and impartial man in the kingdom was made up as to Mr. Hastings. He was confident that Mr. Hastings in no one act of his public life, had been warped by interested or by malicious motives. One good effect this Trial would have—it would convince his countrymen how grossly they had been imposed upon, and they would be less liable to imposition in future.

Mr. Law concluded by saying, that as he thought the conduct of the leading Manager throughout the Trial had entailed shame and disgrace upon the House of Commons, he should vote most heartily for the previous question.

Mr. Fox, in explanation said, that what he had said on the topic alluded to, was the result of a full consideration of the subject, and not from the hesitancy of any person whatever; and what, were the same occasion to occur, he should not hesitate to say again; but if it was from hesitancy only that he had his information, he wondered how the Honourable Member came to know that circumstance; but he could tell him, the fact was quite the reverse.

Mr. Ashurst supported the conduct of Mr. Burke, and said, that though the leading Manager originally had told the story of Deby Sing, yet it was another Right Honourable Gentleman (Mr. Fox) and himself who proposed to give evidence upon it, thinking they might make Mr. Hastings responsible for the acts of Deby Sing. It was true the Court had unanimously rejected the evidence; but he still retained his own opinion on that, and on other points of evidence which had been rejected.

Mr. Sumner spoke in explanation; he wished, if any one Gentleman doubted his veracity, to refer to the minutes of the short-hand writer, as the only criterion by which they could determine who was right in the statement of the language used by the Right Honourable Manager; and upon this point, he declared himself willing to meet any of those Gentlemen who considered it in a different point of view from him.

Mr.

* In justification of Mr. Sumner's animadversions both in this and his former Speech, we insert the following extracts from Mr. BURKE'S Speeches in the several years.

Mr. BURKE in 1788.

"MY LORDS,

"The Gentlemen who have it in command to support the impeachment against Mr. Hastings, late Governor General of Bengal, have directed me to open a *general view of the grounds upon which the Commons have proceeded in their charges against him*: to open a general view of the *extent, the magnitude, the nature, the tendency, and effect of the crime* with which they have charged him.

"*What the greatest interests of the nation have begun, its highest tribunal will accomplish. Justice will be done to India.*

"It is not *solely*, whether the prisoner at the bar be found *innocent or guilty*, but whether millions of mankind should be *miserable or happy*.

"My Lords, It is not only the subjects of this great empire who are concerned, *but the credit and honour of the British nation will itself be decided by this decision.*

"We know that as we are to be served by men, that the persons who serve us *must be tried as men*, and that there is a very large allowance indeed due to human infirmity and human error. This we know, *and have weighed before we came to your Lordships bar.* But the crimes we charge are not the *causes and effects of common human frailty*, such as we know and feel, and can allow for; but they are *crimes which have their rise in the wicked dispositions of men*—they are crimes which have their rise in *avarice, rapacity, pride, cruelty, ferocity, malignity of temper, baughiness, insolence*; in short, every thing that manifests

Mr. Sheridan supported the conduct of Mr. Burke; he said, that if the question was merely whether the Managers merited the Thanks of the House or not, that he should not vote on the

heart blackened to the very blackest—a heart dyed deep in blackness—a heart gangrened to the very core.

" We have not chosen to bring before you a poor, trembling delinquent.

" We have brought before you the head, the chief, a captain general of iniquity—one in whom all the fraud, all the tyranny of India are embodied, disciplined, and arrayed.

" You have now a boundless object—it is not from this county, or that parish, but woe betide us, and differing nations.

" Knowing your Lordships to be possessed, along with all other judicial virtues, of that of patience, I hope, and trust, you will not grudge a few short hours to the explanation of what which has cost the Commons near fourteen years of assiduous application—that you will not refuse a few hours to what has cost the people of India upwards of thirty years of their innate inveterate patience to endure.

" The first of his acts was the most bold and extraordinary that I believe entered into the head of any man, I will say, of any tyrant, which was nothing less than a general exceptionless confiscation of the property of Bengal. He put it up to a pretended public, but in reality to a private and corrupt auction.

" I shall say nothing either of the circumstances of the purchase, or of the right of the people to their property, or to the nature and mode of detection, until that great question, the greatest of all which we shall bring, shall be brought before your Lordships particularly as an article of charge.

" And here I come to the beginning of a great notorious system of government, which consists of many abuses, branched out into such a variety of ways, and has so much affected the kingdom, that I may venture to say, it will make one the greatest and most weighty parts of the charges.

" I charge him with having taken away the lands of orphans, with having alienated the fortunes of widows—with having wasted the country and destroyed the inhabitants, after cruelty harassing and distressing them. I charge him with having tortured their persons, and dishonoured their religion, through his wicked agents, who were at the bottom and root of his villainy.

" I charge him in the name of the Commons of England.

" Now, my Lords, what is it we want? We want to have the cause of oppressed princes—of undone women of the first rank, redressed—of desolated provinces and wasted kingdoms redressed.—Do you want a criminal, my Lords? When was so much iniquity charged against any one?—No, my Lords, you must not look to India to furnish one, for Mr. Hastings has not left in India substance enough to furnish such another delinquent.

" I impeach Warren Hastings in the name of the people of India, whose laws, rights, and liberties he has subverted. I impeach him in the name of the people of India, whose country he has destroyed—I impeach him in the name of human nature, which he has cruelly injured and oppressed in both sexes.

Mr. BURKE in 1789.

" Eminent for the pillage and destruction of provinces.

" Crimes of great enormity, the ruin and expulsion of illustrious families, the total ruin of villages, the total expulsion of the first houses in Asia.

" A man who, in his own person, has done more mischief than all those persons whose evil practices had produced all those laws, those regulations, and even his own appointment.

" A corrupt, shocking arrangement was made, and Bengal saw a dancing girl administer its laws.

" He has murdered that man by the hands of Sir Elijah Impey.

" He gorged his ravenous maw with an allowance of 200l. a day. He is not satisfied without sucking the blood of 1400 nobles. He is never corrupt without he is cruel. He never dines without creating a famine. He feeds on the indigent, the decaying, and the ruined, and them he depresses together; not like the generous eagle, who preys on a living, reluctant, equal prey; No; he is like the ravenous vulture, who feeds on the dead, and the enfeebled; who destroys and incapacitates nature in the destruction of its object, while devouring the carcases of the dead, and then prides himself in his ignominious security; and his cruelty is heightened by his corruption; at the same time there is in his hypocrisy something more terrible than

his

the occasion ; but the motion for the previous question on the ground on which it was moved, viz. for the purpose of throwing a reflection on the conduct of one of the Committees, changed

his cruelty. For at the same time that he exercises a *proscription* that sweeps off the bread of thousands of the nobility, he turns the precious balm that flows from wounded humanity into deadly, rancorous, and mortal poison to the human race.

" Mr. Hastings feasts in the dark alone ; like a wild beast he groans in a corner over the dead and dying ; and like the tyger of that country, he wishes to withdraw into a cavern, to indulge with unobserved enjoyment in all the wanton caprices of his appetite.

" He comes a *heavy calamity* to the nation, as we say a country is visited by *famine* and *pestilence*.

" His crimes are so multiplied, that all the contrivances of ingenuity to cover them are abortive.

" If the language had furnished me, under the impression of those feelings, a word sufficient to convey the complicated atrocity of that act, as it stood in my mind, I should certainly not have used the word *murder* ; but having no other, I was obliged to use that word."

Mr. BURKE in 1791.

" One cannot conceive a *crime* that defames *human nature*, of which this man is not charged in the articles of impeachment that are given before your Lordships ; and with respect to the Commons of Great Britain, when human nature is stirred *with rage* against his crimes ; when it is the *sympathy* which God has planted in us, and *horror* of those crimes, that has called the Commons to your Lordships bar ; when they hear of *murders*—when they hear of *women torn from their houses*—when they hear of *the most cruel racks and tortures that can be inflicted*, and all this from the *avarice of the man who is at your Lordships bar*.

" Every drop of blood that was spilt in consequence of his acts, was *murder*. We charge him *with robberies*—we charge him *with tortures*—we charge him *with cruelty*.

" The *unfortunate people of England* for fourteen years have suffered these things. It is they that have had patience.

" The Commons wish at this moment to close the charge, and to proceed no further in any of the articles now before you, than those on which they have already delivered their evidence. My Lords, the Commons rejoice at the approach of a day, by them so long wished, a day which is to vindicate and give glory, or to obscure for ever, the justice of this kingdom. The Commons have approached it with a manly confidence, but at the same time with an anxious solicitude for the greatest stake any nation ever did, or ever could have, namely, whether its highest bodies on judicial proceedings, whether its highest tribunals shall vindicate that justice, without which no government can stand ; whether they shall vindicate the dispensations of Providence, that has committed to great an empire in so distant a country to Great Britain ; whether this country has energy and ability to protect them ; whether we should retain a country so remote and distant, notwithstanding all the difficulties that nature has thrown in our way. My Lords, I venture to say, *this day* is a day most justly desired by the House of Commons."

Mr. BURKE in 1794.

" This swindling *Mæcenas*—swindling of glory, and obtaining honour under false pretences—a bad scribbler of absurd papers, who could never put two sentences of sense together.

" A fraudulent Bullock Contractor—his examples are of persons who have become rebels to their sovereigns.

" A traitorous and rebellious assumption of the power which belongs only to the King, as Sovereign, with both Houses of Parliament.

" If you allow such doctrines, your Lordships are as wild, savage, and unprincipled as the prisoner who stands at your bar.

" His supple, worn-down, beaten, cowed, and I am afraid, bribed colleague, Mr. Wheler.

" Hear what Lord Coke says of a passage in Virgil—

Castigatque auditque doles, subigitque fœterâ.

its nature entirely, and he therefore should feel it his duty to remain in the House with those who opposed it.

The

"Such are the damned and damnable proceedings of a judge in Hell, and such a judge" was Warren Hastings.

"We charge him as a tyrant, an oppressor, and murderer, in the largest sense of the word.

"A man whose origin was low, obscure, and vulgar, and bred in vulgar and ignoble habits—more proud than persons born under canopies of state, and swaddled in purple.

"The indecency, the rancour, the pride, and the insolence of the Dows, the Hastings's, and their adherents.

"You have seen the atrocious insolence, the tyrannical pride with which he reproaches us.

"This cruel tyrant HANNAY, a substitute to a still more cruel and bloody tyrant, WARREN HASTINGS—HASTINGS says to HANNAY, You have sucked blood enough for yourself, now suck blood for your neighbours.

"Captain Williams murdered Rajah Mustapha Cawn with his own hand.

"No man is a tyrant, who is not, when he can be, a rebel.

"God forbid that I should praise that Committee in any respect—I know it was a committee of robbers.

"A species of account, which, in a night cellar among thieves, could hardly be attempted.

"I wore a suit of fine cloaths as Jew bail—they all will burn for your gang.

"Here is a watch—I wore it as long as I chose, and now I give it up to the gang.

"As to house-rent for aid-de-camps, he may say, I have found lodgings in St. Giles's for some of the gang.

"A sink not only of filth and excrement to shock the natural senses, but of filth and excrement to shock the moral sense of every visitor.

"Vindictating himself by the founding of a college for thieves, pickpockets, felons, and house-breakers.

"In the swindling account, swindle upon swindle—and Mr. LARKINE, keeping the private as he kept the public account, has swindled a whole year in his account of this transaction.

"A common-place dog-trot fraud of the meanest of mankind.

"You must repeal the Act of Parliament, if you acquit Mr. HASTINGS—you must pronounce the Legislature a liar.

"Major OSBORNE had been dismissed. A court martial had removed him—I care not whether justly or unjustly; there he sits in that box. Who sent him to Oude to suck the blood the military had spared? A wild beast when his belly is full may be pleased and lick your hand. You might have a serene day under such a beast, but can you under that man HASTINGS?

"He is a captain general of iniquity—thief—tyrant—robber—cheat—sharpener—swindler. We call him all these names, and are sorry that the English language does not afford terms adequate to the enormity of his offences.

"Revenge is a sort of wild justice—it is the test of heroic virtue—we will continue to the end to persecute. I vow, that we bear immortal hatred against this scum, filth, and pollution of Indian guilt; if the Commons do not, I take it all to myself.

"Sir WALTER RALEIGH was called a spider of hell. This was foolish, indecent, in Lord COKE. Had he been a Manager on this trial, he would have been guilty of a neglect of duty; had he not called the prisoner a spider of hell.

"I tremble for the event, because, if the prisoner is innocent, the Commons are guilty.

"Nothing but the malice of the House of Commons could have instigated them to institute this prosecution, if they had not been sure of his guilt—Nothing but a great party formed by his wealth could support him.

"We reduced this cause into a smaller compass, into four Charges, because of the long protraction of it—those we left being as bad as the rest.

"What I compare this man, a bullock-driver, with TAMERLANE and those conquerors—When GOD punished PHARAOH and Egypt, he did not send armies, but lice and locusts, to lay the land waste.

"This

The question was then put, when there appeared,

• For the previous question 21. Noes 55. Majority 34.

The question of Thanks was then put, when there appeared,

Ayes 50. Noes 21. Majority 29.

The usual motion, that the Speaker do give the Thanks of the House to the Managers in their places, was then put and carried; and the *Speaker* addressed the Managers in the following speech:

"GENTLEMEN,

"IT is my duty to communicate to you the Thanks of this House, for the manner in which you have discharged a most arduous trust, on an occasion highly interesting to the honour and justice of the nation.

"The subject to which your attention has been directed was intricate and extensive beyond example: You have proved that it was well suited to your industry and eloquence, the exertions of which have conferred honour, not on yourselves only, but on this House, whose credit is intimately connected with your own. A forcible admonition has been given, on this occasion, to all persons in situations of high and important national trust, that they can neither be removed by distance, or sheltered by power, from the vigilance and authority of this House; which is possessed of no privilege more important, than that by which it is enabled to bring public delinquents to the bar of public justice, and thus to preserve or rescue from dishonour the British name and character.

"But in addressing you on this occasion, and in considering the beneficial consequences to be expected from this proceeding, it is impossible not to advert to the increased security which the constitution has derived in the course of it, from the recognition and full confirmation of the principle, that an impeachment is not discontinued by a dissolution of Parliament; a principle essential to the privileges of this House, and to the independent and effectual administration of public justice.

"Under these impressions, suggested by the nature and importance of your trust, and by the manner in which you have discharged it, I obey, with the utmost satisfaction, the commands of this House, by stating to you their Resolution,

"That the Thanks of this House be given to the Members who were appointed the Managers of the Impeachment against Warren Hastings, Esq. for their faithful management in their discharge of the trust reposed in them."

Mr. Pitt moved, that the Speaker do print his speech.

Mr. Burke said, that by the orders of the House, when the Thanks were given, he and his Brother-Managers were tongue-tied, and had no means whereby to express their gratitude but by their submission to those orders. But he thought he should be wanting in gratitude if he did not, the moment the penalty of silence was removed, seize the first opportunity to express his own satisfaction, and that of his Fellow-Managers, on the occasion. They had laboured to discharge their duty, they had completed the task, and they were paid by the Thanks of that House, the first reward men could receive. Next to the Thanks he must notice the very dignified and elegant manner in which the Speaker had discharged that task, in which he consulted not only the grandeur and dignity of that House, but at the same time politeness and attention to them. He then entered into a short defence of the conduct of the Impeachment. He assured the House that no asperity of remark should provoke him to say a word; that prejudices arising from personal friendship, or from a sense of personal obligations, were too laudable for him to be discomposed at: he would only assure the House, that he had thrown no general reflections on the Company's servants, having merely repeated what *Mr. Hastings* himself had said of the troops serving in Oude; and it would be found by

"This arbitrary creature—ignorant—stupid—from a blind presumption, overturned the whole system, and ruined the trade of the country. By his own conduct, he set all vigilance asleep: by his bullock contracts he corrupted his coadjutor.

"When he comes before you, you find him possessed of no one quality fit for any business whatever.

"Sometimes Gop has made wickedness mad.

"I ask and scrutinize what was latent in a tiger's heart—what was in a tiger's breast to do—and that he did.

"He formed all these infernal plots in his mind, uncertain which he would execute.

"At the same time that he had the rapacity of a vulture, he had not the talons or the beak of a vulture—he lost his prey."

referring to the 12th and 13th Articles, that the House had marked their opinion of the Officers serving in Oude, in the very terms that he had used; and as for the other expressions, they had been very much misrepresented.

Mr. Law in reply to *Mr. Burke* said, that he desired not to be included amongst those Gentlemen, if any such there were, which he did not believe, who acted either from early prejudices, or from a sense of favours received; he was as independent of *Mr. Hastings* as of the two Right Honourable Gentlemen who were united upon the present question; and he gave his vote from the firmest conviction that he was right, and that, instead of Thanks, the leading Manager merited the reprobation of every man who had the honour of the House and of the country at heart: he was, indeed, sorry to see the Right Honourable Gentleman (*Mr. Fox*), whom he much respected, acting in the present instance under such a leader. He knew what the sense of the country was; and no vote of that House, though supported by all the influence both of the Minister and of the Opposition, could change the public mind, or convince the people of the propriety of the conduct of the leading Manager. With regard to his having misrepresented any one expression used by the leading Manager in Westminster-hall, he was confident he had not, and that if the minutes of the short-hand writer were referred to, it would be found, that he had been infinitely more abusive and violent than he had been represented in the quotations that were made. *Mr. Law* repeated, that no contradiction, let it come from what quarter it would, could have the slightest effect in this case; it was impossible to mistake what so many thousands had heard, what so many thousands had reprobated, and which, as he said before, excited no other sentiments than those of contempt and indignation in the minds of the auditors, from persons of the highest rank down to the door-keepers, guards, and porters, attending in and about Westminster-hall.

END OF THE SEVENTH PART.

S U P P L E M E N T.

REPORT FROM THE COMMITTEE OF THE HOUSE OF COMMONS APPOINTED TO INSPECT THE LORDS' JOURNALS IN RELATION TO THEIR PROCEEDINGS ON THE TRIAL OF WARREN HASTINGS, ESQ. AND TO REPORT WHAT THEY FIND THEREIN TO THE HOUSE; WHICH COMMITTEE WERE THE MANAGERS APPOINTED TO MAKE GOOD THE ARTICLES OF IMPEACHMENT AGAINST THE SAID WARRÉN HASTINGS, ESQ. AND WHO WERE AFTERWARDS INSTRUCTED TO REPORT THE SEVERAL MATTERS WHICH HAVE OCCURRED SINCE THE COMMENCEMENT OF THE SAID PROSECUTION, AND WHICH HAVE, IN THEIR OPINION, CONTRIBUTED TO THE DURATION THEREOF TO THE PRESENT TIME, WITH THEIR OBSERVATIONS THEREUPON.

YOUR Committee has received two powers from the House—the first on the 5th of March 1794, to inspect the Lords Journals in relation to their Proceedings on the Trial of Warren Hastings, Esq. and to report what they find therein to the House.

The second is an instruction given on the 17th day of the same month of March, to this effect: That your Committee do report to this House the several matters which have occurred since the commencement of the said prosecution, and which have, in their opinion, contributed to the Duration thereof to the present time, with their observations thereupon.

Your Committee is sensible, that the Duration of the said Trial, and the Causes of that Duration, as well as the matters which have therein occurred, do well merit the attentive consideration of this House; we have therefore endeavoured, with all diligence, to employ the powers that have been granted, and to execute the orders that have been given to us, and to report thereon as speedily as possible, and as fully as the time would admit.

Your Committee has considered, first, the mere fact of the Duration of the Trial, which they find to have commenced on the 13th day of February 1788. and to have continued by various adjournments to the said 17th of March.

During that period, the Sittings of the Court have occupied one hundred and eighteen days, or about one third of a year.

The distribution of the Sitting-days in each year is as follows:

	Days
In the year 1788, the Court sat	35
1789, ———	17
1790, ———	14
1791, ———	5
1792, ———	22
1793, ———	22
1794, to the 1st of } March, inclusive }	3

Total 118

Your Committee then proceeded to consider the Causes of this Duration with regard to Time, as measured by the Calendar, and also as measured by the Number of Days occupied in actual Sitting.

[A]

They

They find, on examining the Duration of the Trial, with reference to the Number of *Years* which it has lasted, that it has been owing to several prorogations, and to one dissolution of Parliament; to discussions which are supposed to have arisen in the House of Peers on the legality of the continuance of Impeachments from Parliament to Parliament; that it has been owing to the number and length of the adjournments of the Court, particularly the adjournments on account of the Circuit, which adjournments were interposed in the middle of the Session, and the most proper time for business; that it has been owing to one adjournment made in consequence of a complaint of the Prisoner against one of your Managers, which took up a space of ten days; that two days adjournment were made on account of the illness of certain of the Managers; and, as far as your Committee can judge, two Sitting-days were prevented by the sudden and unexpected dereliction of the defence of the Prisoner at the close of the last Session, your Managers not having been then ready to produce their evidence in reply, nor to make their observations on the evidence produced by the Prisoner's Counsel, as they expected the whole to have been gone through before they were called on for their reply. In this Session your Committee computes that the Trial was delayed about a week or ten days. The Lords waited for the recovery of the Marquis Cornwallis, the Prisoner wishing to avail himself of the testimony of that Noble Person.

With regard to the one hundred and eighteen days employed in actual Sitting, the distribution of the business was in the manner following: there were spent,

	Days
In reading the Articles of Impeachment and the Defendant's Answer, and in Debate on the Mode of Proceeding	3
Opening Speeches and Summing-up by the Managers	19
Documentary and oral Evidence by the Managers	51
Opening Speeches and Summing-up by the Defendant's Counsel, and Defendant's Addresses to the Court	22
Documentary and oral Evidence on the part of the Defendant	23
	<hr/> 118

The other head, namely, that the Trial has occupied one hundred and eighteen Days, or nearly one third of a-year,—this your Committee conceive to arise from the following immediate causes:

First, The nature and extent of the matter to be tried.

Secondly, The general nature and quality of the evidence produced. It was principally documentary evidence contained in papers of great length, the whole of which was often required to be read, when brought to prove a single short fact. Under the head of evidence must be taken into consideration the number and description of the witnesses examined and cross-examined.

Thirdly, and principally, The Duration of the Trial is to be attributed to objections taken by the Prisoner's Counsel to the admissibility of several documents and persons offered as evidence on the part of the Prosecution. These objections amounted to sixty-two: they gave rise to several debates, and to twelve references from the Court to the Judges.

On the part of the Managers the number of objections was small; the debates upon them were short: there was not upon them any reference to the Judges; and the Lords did not even retire upon any of them to the Chamber of Parliament.

This last Cause of the Number of Sitting-days your Committee considers as far more important than all the rest. The questions upon the admissibility of evidence; the manner in which these questions were stated and were decided; the modes of proceeding; the great uncertainty of the principle upon which evidence in that Court is to be admitted or rejected; all these appear to your Committee materially to affect the constitution of the House of Peers as a court of judicature, as well as its powers, and the purposes it was intended to answer in the State. The Peers have a valuable interest in the conservation of their own lawful privileges; but this interest is not confined to the Lords. The Commons ought to partake in the advantage of the judicial rights and privileges of that high Court. Courts are made for the suitors, and not the suitors for the court. The conservation of all other parts of the law, the whole indeed of the rights and liberties of the subject, ultimately depends upon the preservation of the law

of Parliament in its original force and authority.

Your Committee had reason to entertain apprehensions, that certain proceedings in this Trial may possibly limit and weaken the means of carrying on any future Impeachment of the Commons. As your Committee felt these apprehensions strongly, they thought it their duty to begin with humbly submitting facts and observations on the proceedings concerning evidence to the consideration of this House, before they proceed to state the other matters which come within the scope of the directions which they have received.

To enable your Committee the better to execute the task imposed upon them in carrying on the Impeachment of this House, and to find some principle on which they were to order and regulate their conduct therein, they found it necessary to look attentively to the jurisdiction of the Court in which they were to act for this House, and into its laws and rules of proceeding, as well as into the rights and powers of the House of Commons in their Impeachments.

RELATION OF THE JUDGES, &c. TO THE COURT OF PARLIAMENT.

Upon examining into the course of proceeding in the House of Lords *, and into the relation which exists between the Peers on the one hand, and their attendants and assistants, the Judges of the Realm, Barons of the Exchequer of the Coif, the King's learned Counsel, and the Civilian Masters of the Chancery, on the other; it appears to your Committee, that these Judges, and other persons learned in the common and civil laws, are no integrant and necessary part of that Court. Their writs of summons are essentially different; and it does not appear, that they or any of them have, or of right ought to have, a deliberate voice, either actually or virtually, in the judgments given in the High Court of Parliament. Their attendance in that Court is solely ministerial; and their answers to questions put to them are not to be regarded as declaratory of the law of Parliament, but are merely consultatory responses, in order to furnish such matter (to be submitted to the judgment of the Peers) as may be useful in reasoning by ana-

logy, so far as the nature of the rules in the respective Courts of the learned persons consulted, shall appear to the House to be applicable to the nature and circumstances of the case before them, and no otherwise.

JURISDICTION OF THE LORDS.

Your Committee finds, that in all Impeachments of the Commons of Great Britain for High Crimes and Misdemeanors before the Peers in the High Court of Parliament, the Peers are not Triers or Jurors only, but by the ancient laws and constitution of this Kingdom, known by constant usage, are Judges both of law and fact; and we conceive that the Lords are bound not to act in such a manner as to give rise to an opinion that they have virtually submitted to a division of their legal powers; or that, putting themselves into the situation of mere Triers or Jurors, they may suffer the evidence in the cause to be produced or not produced before them according to the discretion of the Judges of the inferior Courts.

LAW OF PARLIAMENT.

Your Committee finds, that the Lords, in matter of Appeal or Impeachment in Parliament, are not of right obliged to proceed according to the course or rules of the Roman civil law, or by those of the law or usage of any of the inferior Courts in Westminster Hall, but by the law and usage of Parliament. And your Committee finds, that this has been declared in the most clear and explicit manner by the House of Lords in the year of Our Lord 1387 and 1388, in the eleventh year of King Richard the Second.

Upon an Appeal in Parliament then depending against certain great persons, Peers and Commoners, the said Appeal was referred to the Justices and other learned persons of the law: "at which time," (it is said in the record *) "that the Justices and Serjeants, and others the learned in the law civil, were charged, by order of the King our Sovereign aforesaid, to give their faithful counsel to the Lords of the Parliament concerning the due proceedings in the cause of the Appeal aforesaid. The which Justices, Serjeants, and the learned in the law of the king-

* 4. Inst. p. 4.

† Rol's Parl. Vol. iii. p. 236.

dom, and also the learned in the law civil, have taken the same into deliberation; and have answered to the said Lords of Parliament, that they had seen and well considered the tenour of the said Appeal; and they say, that the same Appeal was neither made nor pleaded according to the order which the one law or the other requires. Upon which the said Lords of Parliament have taken the same into their deliberation, and consultation, and by the assent of our said Lord the King, and of their common agreement, it was declared, that in so high a crime as that which is charged in this Appeal, which touches the person of our Lord the King and the state of the whole Kingdom, perpetrated by persons who are Peers of the Kingdom along with others, the cause shall not be tried in any other place but in Parliament, nor by any other law than the law and course of Parliament; and that it belongeth to the Lords of Parliament, and to their franchise and liberty, by the ancient custom of the Parliament, to be judges in such cases, and in these cases to judge by the assent of the King; and thus it shall be done in this case by the award of Parliament: because the realm of England has not been heretofore, nor is it the intention of our said Lord the King and the Lords of Parliament that it ever should be, governed by the law civil: and also it is their resolution not to rule or govern so high a cause as this Appeal is, which cannot be tried any where but in Parliament, as hath been said before, by the course, process, and order used in any Courts or places inferior in the same kingdom; which Courts and places are not more than the executors of the ancient laws and customs of the Kingdom, and of the ordinances and establishments of Parliament.—It was determined by the said Lords of Parliament, by the assent of our said Lord the King, that this Appeal was made and pleaded well and sufficiently, and that the process upon it is good and effectual, according to the law and course of Parliament, and for such they decree and adjudge it.”

And your Committee finds, that, toward the close of the same Parliament,

the same right was again claimed and admitted as the special privilege of Peers, in the following manner:—“In this Parliament, all the Lords then present, Spiritual as well as Temporal, claimed as their franchise, that the weighty matters moved in this Parliament, and which shall be moved in other Parliaments in future times, touching the Peers of the Land, shall be managed, adjudged, and discussed by the course of Parliament, and in no sort by the law civil, or by the common law of the land, used in the other lower Courts of the kingdom; which claim, liberty, and franchise, the King graciously allowed, and granted to them in full Parliament.”

Your Committee finds, that the Commons, having at that time considered the Appeal above mentioned, approved the proceedings in it, and, as far as in them lay, added the sanction of their accusation against the persons who were the objects of the Appeal. They also, immediately afterwards, impeached all the Judges of the Common Pleas, the Chief Baron of the Exchequer, and other learned and eminent persons, both Peers and Commoners, upon the conclusion of which Impeachments it was that the second claim was entered. In all the transactions aforesaid the Commons were acting parties; yet neither then, nor ever since, have they made any objection or protestation, that the rule laid down by the Lords in the beginning of the Session of 1388, ought not to be applied to the Impeachments of Commoners as well as Peers. In many cases they have claimed the benefit of this rule; and in all cases they have acted, and the Peers have determined, upon the same general principles. The Peers have always supported the same franchises; nor are there any precedents upon the records of Parliament subverting either the general rule or the particular privilege, so far as the same relates either to the course of proceeding or to the rule of law by which the Lords are to judge.

Your Committee observes also, that in the commissions to the several Lords High Stewards who have been appointed on the Trials of Peers impeached by the Commons, the proceedings are directed to be had according to the law and custom of the Kingdom and the

custom of Parliament; which words are now to be found in the commissions for trying upon indictments.

"As every Court of Justice" (says Lord Coke) "hath laws and customs for its direction, some by the common law, some by the civil and canon law, some by peculiar laws and customs, &c. so the High Court of Parliament *suis propriis legibus et consuetudinibus subsistit*. It is by the *lex et consuetudo Parliamenti* that all weighty matters, in any Parliament moved, concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be determined, adjudged, and discussed by the course of the Parliament, and not by the civil law, nor yet by the common laws of this realm used in more inferior Courts *."—And after founding himself on this very precedent of the 11th of Richard II. he adds, "*This is the reason that Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the common laws, but secundum legem et consuetudinem Parliamenti: And so the Judges in divers Parliaments have confessed.*"

RULE OF PLEADING.

Your Committee do not find, that any Rules of Pleading, as observed in the inferior Courts, have ever obtained in the proceedings of the High Court of Parliament, in a cause or matter in which the whole procedure has been within their original jurisdiction. Nor does your Committee find, that any demurrer or exception, as of false or erroneous pleading, hath been ever admitted to any Impeachment in Parliament, as not coming within the form of the pleading; and although a reservation or protest is made by the defendant (matter of form, as we conceive) "to the generality, uncertainty, and insufficiency of the Articles of Impeachment," yet no objections have in fact been ever made in any part of the record; and when verbally they have been made (until this Trial), they have constantly been over-ruled.

The Trial of Lord Strafforde is one of the most important parts in the History of Parliamentary Jurisdiction †. In that Trial, and the dispositions made preparatory to it, the process on Im-

peachments was, on great consideration, research, and selection of precedents, brought very nearly to the form which it retains at this day; and great and important parts of Parliamentary law were then laid down. The Commons at that time made new charges, or amended the old, as they saw occasion. Upon an application from the Commons to the Lords, that the examinations taken by their Lordships at their request, might be delivered to them, for the purpose of a more exact specification of the charge they had made; on delivering the message of the Commons, Mr. Pim, amongst other things, said, as it is entered in the Lords' Journals ‡, "According to the clause of reservation in the conclusion of their charge, they (the Commons) will add to the charges, not to the matter in respect of comprehension, extent, or kind, but only to reduce them to more particularities, that the Earl of Strafforde might answer with the more clearness and expedition—not that they are bound by this way of SPECIAL charge; and therefore they have taken care in their House, upon protestation, that this shall be no prejudice to bind them from proceeding in GENERAL in other cases, and that they are not to be ruled by proceedings in other courts, which protestation they have made for the preservation of the power of Parliament; and they desire that the like care may be had in your Lordships' House."

This Protestation is entered on the Lords' Journals. Thus careful were the Commons that no exactness used by them for a temporary accommodation, should become an example derogatory to the larger rights of Parliamentary process.

At length the question of their being obliged to conform to any of the rules below came to a formal judgment §. In the Trial of Dr. Sacheverell, March 10th, 1709, "the Lord Nottingham declared their Lordships' opinion, Whether he might propose a question to the Judges here (in Westminster Hall)? Thereupon the Lords, being moved to adjourn, adjourned to the House of Lords, and on debate (as appears by a note) it was agreed, that the question should be proposed in Westminster Hall." Accordingly, when the Lords returned the same day

* 4. Inst. p. 15.

† 16. Cl. 1. 1649.

‡ Lords' Journals, Vol. iv. p. 133.

§ Lords' Journals, Vol. xix. p. 98.

into the Hall, the question was put by Lord Nottingham, and stated to the Judges by the Lord Chancellor :

“ Whether by the *Law of England*, and constant Practice in all Prosecutions by *Indictment and Information*, for crimes and misdemeanors, by writing or speaking, the particular words supposed to be written or spoken must not be expressly specified in the indictment or information ? ”

On this question the Judges, *seriatim*, and in open Court, delivered their opinion; the substance of which was, “ That by the Laws of England, and the constant Practice in Westminster Hall, the words ought to be expressly specified in the indictment or information.”

Then the Lords adjourned, and did not come into the Hall until the 20th, In the intermediate time they came to Resolutions on the matter of the question put to the Judges. Dr. Sacheverell, being found guilty, moved in arrest of judgment upon two points : the first, which he grounded on the opinion of the Judges, and which your Committee thinks most to the present purpose, was, “ That no entire clause, or sentence, or expression, in either of his Sermons or Dedications, is particularly set forth in his Impeachment, which he has already heard the Judges declare to be necessary in all cases of Indictments or Informations.”

On this head of objection, the Lord Chancellor, on the 23d of March, agreeably to the Resolutions of the Lords of the 14th and 16th of March, acquainted Dr. Sacheverell :

“ That on occasion of the question before put to the Judges in *Westminster Hall*, and their answer thereto, their Lordships had fully debated and considered of that matter, and had come to the following Resolution :

“ That this House will proceed to the determination of the Impeachment of Dr. Henry Sacheverell according to the *Law of the Land* and the *Law and Usage of Parliament*.

“ And afterwards to this Resolution :

“ That by the *Law and Usage of Parliament* in prosecutions for High Crimes and Misdemeanors by writing or speaking, the particular words supposed to be criminal are not neces-

sary to be expressly specified in such Impeachment.

“ So that, in their Lordships’ opinion, the Law and Usage of the High Court of Parliament being a part of the *Law of the Land*, and that Usage not requiring that words should be exactly specified in Impeachments, the answer of the Judges, which related only to the course of *Indictment and Informations*, does not in the least affect your case †.”

On this solemn judgment concerning the Law and Usage of Parliament, it is to be remarked, First, That the Impeachment itself is not to be presumed inartificially drawn. It appears to have been the work of some of the greatest lawyers of the time, who were perfectly versed in the manner of pleading in the Courts below, and would naturally have imitated their course, if they had not been justly fearful of setting an example which might hereafter subject the plainness and simplicity of a Parliamentary proceeding to the technical subtleties of the inferior Courts : Secondly, That the question put to the Judges, and their answer, were strictly confined to the law and practice below ; and that nothing in either had a tendency to their delivering an opinion, concerning Parliament, its laws, its usages, its course of proceeding, or its powers : Thirdly, That the motion in arrest of judgment, grounded on the opinion of the Judges, was made only by Dr. Sacheverell himself, and not by his Counsel, men of great skill and learning, who, if they thought the objections had any weight, would undoubtedly have made and argued them.

Here, as in the case of the 11th King Richard the Second, the Judges declared unanimously, that such an objection would be fatal to such a pleading in any Indictment or Information ; but the Lords, as on the former occasion, over-ruled this objection, and held the Article to be good and valid, notwithstanding the report of the Judges concerning the mode of proceeding in the Courts below.

Your Committee finds, that a Protest, with reasons at large, was entered by several Lords against this determination of their Court ‡. It is always an advantage to those who protest, that their reasons appear upon record, whilst the reasons of the majority who determine

* Lords’ Journals, Vol. xix. p. 116.

† P. 121.

‡ P. 106.

the question do not appear. This would be a disadvantage of such importance as greatly to impair, if not totally destroy, the effect of precedent as authority, if the reasons which prevailed were not justly presumed to be more valid than those which have been obliged to give way, the former having governed the final and conclusive decision of a competent Court. But your Committee, combining the fact of this decision with the early decision just quoted, and with the total absence of any precedent of an objection, before that time or since, allowed to pleading, or what has any relation to the rules and principles of pleading as used in Westminster Hall, has no doubt that the House of Lords was governed in the 9th of Anne by the very same principles which it had solemnly declared in the 11th of Richard the Second.

But besides the presumption in favour of the reasons which must be supposed to have produced this solemn judgment of the Peers, contrary to the practice of the Courts below as declared by all the Judges, it is probable, that the Lords were unwilling to take a step which might admit that any thing in that practice should be received as their rule.

It must be observed, however, that the reasons against the Article alledged in the Protest were by no means solely bottomed in the practice of the Courts below, as if the main reliance of the Protesters was upon that usage. The protesting minority maintained, that it was not agreeable to *several precedents in Parliament*, of which they cited many in favour of their opinion. It appears by the Journals, that the Clerks were ordered to search for precedents, and a Committee of Peers was appointed to inspect the said precedents, and to report upon them; and that they did inspect and report accordingly. But the report is not entered on the Journals. It is, however, to be presumed, that the greater number and the better precedents supported the judgment.

Allowing, however, their utmost force to the precedents there cited, they could serve only to prove, that in the *case of words* (to which alone, and not the case of a *written* libel, the precedents extended) such a special averment, according to the tenor of the words, had

been used; but not that it was necessary, or that ever any plea had been rejected upon such an objection.

As to the course of Parliament, resorted to for authority in this part of the Protest, the argument seems rather to affirm than to deny the general proposition, that its own course, and not that of the inferior Courts, had been the rule and law of Parliament.

As to the objection taken in the Protest, drawn from natural right, the Lords knew, and it appears in the course of the proceeding *, that the whole of the libel had been read at length, as appears from p. 655 to p. 666. so that Dr. Sacheverell had *substantially* the same benefit of any thing which could be alledged in extenuation or exculpation, as if his libellous Sermons had been entered *verbatim* upon the recorded Impeachment. It was adjudged sufficient to state the crime *generally* in the Impeachment. The libels were given in *evidence*; and it was not then thought of, that nothing should be given in evidence which was not specially charged in the Impeachment.

But whatever their reasons were (great and grave they were, no doubt), such, as your Committee has stated, it, is the *judgment* of the Peers on the *Law* of Parliament as a part of the *Law* of the Land. It is the more forcible as concurring with the judgment of the 11th of Richard the Second, and with the total silence of the Rolls and Journals concerning any objection to pleading ever being suffered to vitiate an Impeachment, or to prevent evidence being given upon it on account of its generality or any other failure.

Your Committee do not think it probable, that, even before this adjudication, the rules of pleading below could ever have been adopted in a Parliamentary proceeding, when it is considered, that the several statutes of Jeofails, not less than twelve in number, have been made for the correction of an over-strictness in pleading, to the prejudice of substantial justice †: yet in no one of these is to be discovered the least mention of any proceeding in Parliament. There is no doubt that the Legislature would have applied its remedy to that grievance in Parliamentary proceedings, if it had found those proceedings embarrassed with what

* State Trials, Vol. v.

† Statutes at Large, from 12. Ed. 1. to 16. and 17. Ch. 2.

Lord Mansfield, from the Bench, and speaking of the matter of these statutes, very justly calls "disgraceful subtleties."

What is still more strong to the point, your Committee finds, that, in the 7th of William the Third, an act was made for the regulating of Trials for Treason and Misprision of Treason, containing several regulations "for reformation of proceedings at law, both as to matters of form and substance, as well as relative to evidence. It is an act thought most essential to the liberty of the subject, yet in this high and critical matter, so deeply affecting the lives, properties, honours, and even the inalienable blood of the subject, the Legislature was so tender of the high powers of this High Court, deemed so necessary for the attainment of the great objects of its justice, so fearful of enervating any of its means, circumscribing any of its capacities, even by rules and restraints the most necessary to the inferior Courts, that they guarded against it by an express proviso, "That neither this act, nor any thing therein contained, shall any ways extend to any *Impeachment or other proceedings in Parliament in any kind whatsoever.*"

CONDUCT OF THE COMMONS IN PLEADING.

This point being thus solemnly adjudged in the case of Dr. Sacheverell, and the principles of the judgment being in agreement with the whole course of Parliamentary proceedings, the Managers for this House have ever since considered it as an indispensable duty to assert the same principle in all its latitude upon all occasions on which it could come in question; and to assert it with an energy, zeal, and earnestness, proportioned to the magnitude and importance of the interest of the Commons of Great Britain in the religious observation of the rule, *that the Law of Parliament, and the Law of Parliament only, should prevail in the Trial of their Impeachments.*

In the year 1715 (1. Geo. 1.), the Commons thought proper to impeach of high treason the Lords who had entered into the rebellion of that period. This was about six years after the decision in the case of Sacheverell. On the Trial of one of these Lords (the Lord Wintoun), after verdict, the Prisoner moved in arrest of judgment, and excepted against the Impeachment for error, on account of the treason therein laid "not being de-

scribed with sufficient certainty, the day on which the treason was committed "not having been alledged." His Counsel was heard to this point. They contended, "that the forfeitures in cases of Treason are very great; and therefore they humbly conceived, that the accusation ought to contain all the certainty it is capable of, that the Prisoner may not by *general allegations* be rendered incapable to defend himself in a case which may prove fatal to him:—that they would not trouble their Lordships with citing authorities, for they believed there is not one Gentleman of the Long Robe but will agree that an indictment for any capital offence to be erroneous, if the offence be not alledged to be committed on a certain day:—that this Impeachment set forth only, that in or about the months of September, October, or November, 1715"—"the offence charged in the Impeachment had been committed. The Counsel argued, that a proceeding by Impeachment is a proceeding at the common law, for *lex Parliamentaria* is a part of common law; and they submitted whether there is not the same certainty required in one method of proceeding at common law as in another."

The matter was argued elaborately and learnedly, not only on the general principles of the proceedings below, but on the inconvenience and possible hardships attending this uncertainty. They quoted Sacheverell's case, in whose Impeachment "the precise days were laid when the Doctor preached each of these two Sermons; and that by a like reason a certain day ought to be laid in the Impeachment when this Treason was committed; and that the authority of Dr. Sacheverell's case seemed so much stronger than the case in question, as the crime of Treason is higher than that of a Misdemeanor."

Here the Managers for the Commons brought the point a second time to an issue, and that on the highest of capital cases; an issue, the event of which was to determine for ever, whether their Impeachments were to be regulated by the Law, as understood and observed in the inferior Courts. Upon the usage below there was no doubt; the Indictment would unquestionably have been quashed; but the Managers for the Commons stood forth upon this occasion with a determined resolution, and no less than four of them *seriatim* rejected the doctrine con-

tended for by Lord Wintoun's Counsel. They were all eminent Members of Parliament, and three of them great and eminent lawyers, namely, the then Attorney General, Sir William Thompson, and Mr. Cowper.

Mr. Walpole said, "Those learned Gentlemen" (Lord Wintoun's Counsel) *"seem to forget in what Court they are."* They have taken up so much of your Lordships' time in quoting Authorities, and using arguments to shew your Lordships what would quash an Indictment in the Courts below, that they seem to forget they are now in a Court of Parliament, and on an Impeachment of the Commons of Great Britain. For, should the Commons admit all that they have offered, it will not follow that the Impeachment of the Commons is insufficient; and I must observe to your Lordships, that neither of the learned Gentlemen have offered to produce one instance relative to an Impeachment. I mean to shew, that the sufficiency of an Impeachment was never called in question for the generality of the charge, or that any instance of that nature was offered at before. The Commons don't conceive, that if this exception would quash an Indictment, it would therefore make the Impeachment insufficient. I hope it never will be allowed here as a reason, that what quashes an Indictment in the Courts below, will make insufficient an Impeachment brought by the Commons of Great Britain."

The Attorney General supported Mr. Walpole in affirmance of this principle. He said, "I would follow the steps of the learned Gentleman who spoke before me, and I think he has given a good answer to these objections. I would take notice that we are upon an Impeachment, not upon an Indictment. The Courts below have set forms to themselves, which have prevailed for a long course of time, and thereby are become the forms by which those Courts are to govern themselves; but it never was thought that the forms of those Courts had any influence on the proceedings of Parliament. In Richard the Second's time, it is said in the Records of Parliament, that proceedings in Parliament are not to be governed by the forms of Westminster Hall. We are in the case of an Impeachment, and in the Court of Parliament. Your Lordships have already given judgment against us upon this Impeachment, and it is warranted by the precedents in

[SUPPLEMENT.]

Parliament; therefore we insist that the Articles are good in substance."

Mr. Cowper.—"They" (the Counsel) cannot but know that the Usages of Parliament are part of the Laws of the Land, although they differ in many instances from the Common Law, as practised in the inferior Courts, in point of form.

"My Lords, if the Commons, in preparing Articles of Impeachment, should govern themselves by precedents of Indictment, in my humble opinion they would depart from the ancient, nay, the constant Usage and Practice of Parliament. It is well known, that the form of an Impeachment has very little resemblance to that of an Indictment; and I believe the Commons will endeavour to preserve the difference by adhering to their own precedents."

Sir William Thompson.—"We must refer to the Forms and Proceedings in the Court of Parliament, and which must be owned to be part of the Law of the Land. It has been mentioned already to your Lordships, that the precedents in Impeachments are not so nice and precise in form as in the inferior Courts; and we presume your Lordships will be governed by the forms of your own Court (especially forms that are not essential to justice) as the Courts below are by theirs; which Courts differ one from the other in many respects as to their Forms of Proceedings, and the Practice of each Court is esteemed as the Law of that Court."

The Attorney General in reply maintained his first doctrine—"There is no uncertainty in it that can be to the prejudice of the Prisoner; we insist it is according to the Forms of Parliament—he has pleaded to it, and your Lordships have found him guilty."

The opinions of the Judges were taken in the House of Lords on the 19th of March 1715, upon two questions, which had been argued in arrest of judgment, grounded chiefly on the Practice of the Courts below.

To the first the Judges answered: "It is necessary that there be a certain day laid in such Indictments on which the fact is alleged to be committed; and that alledging in such indictments that the fact was committed at or about a certain day, would not be sufficient."

To the second they answered; "That although a day certain, when the fact is supposed to be done, be alledged in such Indictments, yet it is not necessary upon

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"the

"the Trial to prove the fact to be committed on *that day*; but it is sufficient, "if proved to be done on *any other day* "before the Indictment found."

Then it was "agreed by the House, "and ordered, that the Lord High Steward be directed to acquaint the Prisoner at the Bar in Westminster Hall,

"That the Lords have considered of "the matters moved in a rest of judgment, "and are of opinion that they are not "sufficient to arrest the same, but that "the *Impeachment* is sufficiently certain "in point of time according to the Form "of *Impeachments in Parliament*."

On this final adjudication (given after solemn argument, and after taking the opinion of the Judges) in affirmance of the Law of Parliament against the undisturbed Usage of the Courts below, your Committee has to remark, 1st, the Preference of the Custom of Parliament to the Usage below. By the very latitude of the Charge, the Parliamentary accusation gives the Prisoner fair notice to prepare himself upon all points; whereas there seems something ensnaring in the proceedings upon Indictment, which fixing the specification of a day certain for the treason or felony as absolutely necessary in the charge, gives notice for preparation only on *that day*, whilst the Prosecutor has the whole range of time antecedent to the Indictment to alledge and give evidence of facts against the Prisoner. It has been usual, particularly in later Indictments, to add "at several other times;" but the strictness of naming one day is still necessary, and the want of the larger words would not quash the Indictment.— 2^{dly}, A comparison of the extreme rigour and exactness required in the more *formal* part of the proceeding (the Indictment) with the extreme laxity used in the *substantial* part (that is to say, the Evidence received to prove the fact), fully demonstrates that the partizans of those forms would put shackles on the High Court of Parliament, with which they are not willing, or find it wholly impracticable, to bind themselves. 3^{dly}, That the latitude of departure from the letter of the Indictment (which holds in other matters besides this) is in appearance much more contrary to natural justice than any thing which has been objected against the evidence offered by your Managers, under a pretence that it exceeded the limits of pleading: for in the case of Indictments

below, it must be admitted, that the Prisoner may be unprovided with proof of *affidavit*, and other material means of defence, or may find some matters unlooked for produced against him by witnesses utterly unknown to him; whereas nothing was offered to be given in evidence under any of the Articles of this Impeachment, except such as the Prisoner must have had perfect knowledge of, the whole consisting of matters sent over by himself to the Court of Directors, and authenticated under his own hand. No substantial injustice or hardship of any kind could arise from our evidence under our pleading; whereas in theirs very great and serious inconveniencies might well happen.

Your Committee has further to observe, that in the case of Lord Wintoun, as in the case of Dr. Sacheverell, the Commons had in their Managers persons abundantly practised in the Law as used in the inferior jurisdictions, who could easily have followed the precedents of indictments, if they had not purposely, and for the best reasons, avoided such precedents.

A great Writer on the Criminal Law, Justice Foster, in one of his Discourses †, fully recognizes those principles for which your Managers have contended, and which have to this time been uniformly observed in Parliament. In a very elaborate reasoning on the case of a Trial in Parliament (the Trial of those who had murdered Edward the Second), he observes thus: "It is well known, that in *Parliamentary* proceedings of this kind it is, and ever was, sufficient that matters "appear with proper light and certainty "to a common understanding, without that "minute exactness which is required in "criminal proceedings in Westminster "Hall. In these cases the rule has always "been *loquendum ut vulgus*." And in a note he says, "In the proceeding against "Mortimer in this Parliament, *so little* "regard was had to the Forms used in "Legal Proceedings, that he who had "been frequently summoned to Parliament as a Baron, and had lately been "created Earl of March, is filed, through "the whole record, merely Roger de Mortimer."

The departure from the common forms in the first case alluded to by Foster †, viz. the Trial of Berkeley, Mautravers, &c. for treason, in the murder of Edward the Second, might be more plausibly attacked, because they were tried, though in Parlia-

* Lords' Journals, Vol. xx. p. 316.

† Discourse iv., p. 389.

‡ Parl. Rolls. Vol. ii. p. 57. 4. Ed. 3. A. D. 1330.

ment, by a jury of freeholders ; which circumstance might have given occasion to justify a nearer approach to the forms of indictments below—But no such forms were observed, nor in the opinion of this able judge ought they to have been observed.

PUBLICITY OF THE JUDGES' OPINION.

F It appears to your Committee, that from the 3^d year of Charles the Second until the Trial of Warren Hastings, Esq. in all trials in Parliament, as well upon impeachments of the Commons as on indictments brought up by certiorari, when any matter of law hath been agitated at the bar, or in the course of trial hath been stated by any Lord in the Court, it hath been the prevalent custom to sit to the same in open Court. Your Committee has been able to find, since that period, no more than one precedent (and that a precedent rather in form than in substance) of the opinions of the Judges being taken privately, except when the case on both sides has been closed, and the Lords have retired to consider of their verdict, or of their judgment thereon. Upon the soundest and best precedents, the Lords have improved on the principles of publicity and equality, and have called upon the parties severally to argue the matter of law, previously to a reference to the Judges ; who, on their parts, have afterwards, in *open Court*, delivered their opinions, often by the mouth of one of the Judges, speaking for himself and the rest, and in their presence : And sometimes all the Judges have delivered their opinion *seriatim*, (even when they have been unanimous in it) together with their reasons upon which their opinion had been founded. This, from the most early times, has been the course in all judgments in the House of Peers. Formerly even the record contained the reasons of the decision. "The reason wherefore," said Coke, "the records of Parliaments have been so highly extolled is, that therein is set down, in cases of difficulty, not only the judgment and resolution, but the *reasons* and *causes of the same* by so great advice."

In the 30th of Charles the Second, during the trial of Lord Cornwallis, on the suggestion of a question in law to the Judges, Lord Danby demanded of the Lord High Steward, the Earl of Nottingham, "Whether it would be proper

"here (in open Court) to ask the question of your Grace, or to propose it to the Judges ?"

The Lord High Steward answered, "If your Lordships doubt of any thing whereon a question in law ariseth, the later opinion, and the *better* for the prisoner is—that it *must be stated in the presence of the prisoner, that he may know whether the question be truly put*. It hath *sometimes* been practised otherwise ; and the Peers have sent for the Judges, and have asked their opinion in private, and have come back and have given their verdict according to that opinion, and there is scarcely a precedent of its being otherwise done. There is a later authority in print that doth settle the point so as I tell you—and I do conceive it ought to be followed ; and it being safer for the prisoner, my humble opinion to your Lordship is—that he ought to be present at the *stating of the question*. Call the *Prisoner*."—The prisoner, who had withdrawn, again appearing, he said,

"My Lord Cornwallis, and my Lords and Peers, since they have withdrawn, have conceived a doubt in some matter of *fact* in your case ; and they have that tender regard of a prisoner at the bar, that they will not suffer a case to be put up in his absence, lest it should chance to prejudice him by being *wrong stated*." Accordingly the question was both put, and the Judges' answer given publicly and in his presence."

Very soon after the trial of Lord Cornwallis, the impeachment against Lord Stafford was brought to a hearing, that is, in the 32^d of Charles the Second. In that case the Lord at the bar having stated a point of law, "touching the necessity of two witnesses to an overt act in case of treason ;" the Lord High Steward told Lord Stafford, that "all the Judges that assist them, and are *here in your Lordship's presence and hearing*, should deliver their opinions, whether it be doubtful and disputable, or not."—Accordingly the Judges delivered their opinion, and each argued it (though they were all agreed) *seriatim* and *in open Court*. Another abstract point of law was also proposed from the bar on the same trial, concerning the legal sentence in high treason ; and in the same manner the Judges on reference delivered their opinion in *open*

Court; and no objection was taken to it, as any thing new or irregular*.

In the 1st of James the Second, came on a remarkable trial of a Peer; the trial of Lord Delamere. On that occasion a question of law was stated. There also, in conformity to the precedents and principles given on the trial of Lord Cornwallis, and the precedent in the impeachment of Lord Stafford, the then Lord High Steward took care that the opinion of the Judges should be given in open Court.

Precedents grounded on principles so favourable to the fairness and equity of judicial proceedings, given in the reigns of Charles the Second and James the Second, were not likely to be abandoned after the Revolution. The first trial of a Peer, which we find after the Revolution, was that of the Earl of Warwick.

In the case of the Earl of Warwick †, 11. Will. III. a question in law upon evidence was put to the Judges; the statement of the question was made in open Court by the Lord High Steward, Lord Somers: "If there be six in company, and one of them is killed, the other five are afterwards indicted, and three are tried and found guilty of manslaughter, and upon their prayers have their clergy allowed, and the burning in the hand is respited, but not pardoned; whether any of the three can be a witness on the trial of the other two?" Lord Halifax—"I suppose your Lordships will have the opinion of the Judges upon this point; and that must be in the presence of the prisoner." Lord High Steward (Lord Somers) "It must certainly be in the presence of the prisoner, if you ask the Judges opinions."

In the same year Lord Mohun was brought to trial upon an indictment for murder. In this single trial a greater number of questions was put to the Judges in matter of law, than probably was ever referred to the Judges in all the collective body of trials before or since that period. That trial, therefore, furnishes the largest body of authentic precedents in this point, to be found in the records of Parliament ‡. The number of questions put to the Judges in this trial was twenty-three. They all originated from the Peers themselves; yet the Court called upon the party's Council, as often as questions were proposed to be referred to the

Judges, as well as on the Council for the Crown, to argue every one of them *before* they went to those learned persons. Many of the questions accordingly were argued at the bar at great length. The opinions were given and argued *in open Court*. Peers frequently insisted that the Judges should give their opinion *seriatim*, which they did always publicly in the Court, with great gravity and dignity, and greatly to the illustration of the law, as they held and acted upon it in their own Courts.

In Sacheverell's case (just cited for another purpose) the Earl of Nottingham demanded whether he might not propose a question of law to the Judges *in open Court*. It was agreed to; and the Judges gave their answer *in open Court*, though this was after verdict given: And in consequence of the advantage afforded to the prisoner in hearing the opinion of the Judges, he was thereupon enabled to move in arrest of judgment.

The next precedent which your Committee finds of a question put by the Lords, sitting as a court of judicature, to the Judges pending the trial, was in the 20th of George the Second; when Lord Balmorino, who was tried on an indictment of high treason §, having raised a doubt, whether the evidence proved him to be at the place assigned for the overt act of treason on the day laid in the indictment. The point was argued at the bar by the Council for the Crown in the prisoner's presence, and for his satisfaction. The prisoner, on hearing the argument, waived his objection, but the then Lord President moving their Lordships to adjourn to the Chamber of Parliament, the Lords adjourned accordingly; and after some time, returning into Westminster Hall—the Lord High Steward (Lord Hardwicke) said, "Your Lordships were pleased, in the Chamber of Parliament, to come to a resolution, that the opinion of the learned and reverend Judges should be taken on the following question, namely, Whether it is necessary, that an overt act of high treason should be proved to have been committed on the particular day laid in the indictment? Is it your Lordships' pleasure, that the Judges do now give their opinion on that question?"

Lords.—Aye, aye.

Lord High Steward—My Lord Chief Justice!

* State Trials, Vol. III. p. 212.

† State Trials, Vol. IV. from p. 538, to 551.

‡ 606. Die Lunæ 28th July 1746.

§ State Trials, Vol. V. p. 169.

§ Lords' Journals, Vol. IX.

“ Lord Chief-Justice *,
 “ The question proposed to your Lord-
 “ ships is, Whether it be necessary that
 “ an overt act of high treason should be
 “ proved to be committed on the particu-
 “ lar day laid in the indictment?”

“ We are all of opinion, that it is not
 “ necessary to prove the overt act to be
 “ committed on the particular day laid
 “ in the indictment—but as evidence may
 “ be given of an overt act before the day,
 “ so it may be after the day specified in
 “ the indictment—for the day laid is cir-
 “ cumstance and form only, and not ma-
 “ terial in point of proof, this is the
 “ known constant course of proceedings
 “ in trials.”

Here the case was made for the Judges,
 for the satisfaction of one of the Peers, after
 the prisoner had waived his objection.
 Yet it was thought proper, as a matter of
 course and of right, that the Judges
 should state the question put to them in
 the open Court, and in presence of the
 prisoner—and that in the same open man-
 ner, and in the same presence, their an-
 swer should be delivered.

Your Committee concludes their prece-
 dents begun under *Lord Nottingham* and
 ended under *Lord Hardwicke*. They are
 of opinion, that a body of precedents so
 uniform, so accordant with principle, made
 in such times, and under the authority of
 a succession of such great men, ought not
 to have been departed from. The single
 precedent to the contrary, to which your
 Committee has alluded above, was on the
 trial of the Duchess of Kingston† in the
 reign of his present Majesty. But in that
 instance, the reasons of the Judges were,
 by order of the House, delivered in writing,
 and entered at length on the Journals; so
 that the legal principle of the decision is
 equally to be found, which is not the case
 in any one instance of the present Impeach-
 ment.

The Earl of Nottingham, in Lord
 Cornwallis's case, conceived, though it
 was proper and agreeable to justice, that
 this mode of putting questions to the Judges,
 and receiving their answer in public, was
 not supported by former precedents: But,
 he thought, a book of authority had de-
 clared in favour of this course.

Your Committee is very sensible, that
 antecedent to the great period to which
 they refer, there are instances of questions
 having been put to the Judges privately.
 But we find the *principle* of publicity

(whatever variations from it there might
 be in practice) to have been so clearly
 established at a more early period, that all
 the Judges of England resolved, in Lord
 Morley's trial, in the year 1666 (about
 twelve years before the observation of Lord
 Nottingham), *on a supposition, that the trial
 should be actually concluded, and the Lords
 retired to the Chamber of Parliament to
 consult on their verdict*, that even in that
 case (much stronger than the observation
 of your Committee requires for its support)
 if their opinion should then be demanded
 by the Peers, for the information of their
 private conscience, yet they determined that
 they should be given in public. This resolu-
 tion is in itself so solemn, and is so bottomed
 on constitutional principle, and legal poli-
 cy, that your Committee have thought fit to
 insert it verbatim, in their Report, as they
 relied upon it at the bar of the Court, when
 they contended for the same publicity.

“ It was resolved, that in case the Peers
 “ who are triers, *after the evidence given,*
 “ *and the prisoner withdrawn, and they*
 “ *gone to consult of the verdict*, should
 “ desire to speak with any of the Judges,
 “ to have their opinion upon any point of
 “ law, that if the Lord Steward spoke to
 “ us to go, we should go to them. But
 “ when the Lords asked us any question,
 “ we should not deliver any private opi-
 “ nion; but let them know, *we were not*
 “ *to deliver any private opinion without*
 “ *conference with the rest of the Judges,*
 “ *and that to be done openly in Court; and*
 “ *this (notwithstanding the precedent in*
 “ *the case of the Earl of Castlehaven)*
 “ *was thought prudent, in regard of our-*
 “ *selves, as well as for the avoiding sus-*
 “ *picion which might grow by private*
 “ *opinions—ALL resolutions of Judges*
 “ *being ALWAYS done in public &c.*”

The Judges in this resolution over-ruled
 the authority of the precedent, which mili-
 tated against the whole spirit of their place
 and profession. Their declaration was
 without reserve or exception, that “all
 “ resolutions of the Judges are *always*
 “ done in public.”—These Judges (as
 should be remembered to their lasting
 honour) did not think it derogatory from
 their dignity, nor from their duty to the
 House of Lords, to take such measures con-
 cerning the publicity of their resolutions,
 as should secure them from suspicion.
 They knew that the mere circumstance of
 privacy in a Judicature where any publi-
 city is in use, tends to beget suspicion and

Lord Chief Justice Lee.

† State Trials, Vol. II, p. 262

‡ Kelynge's Reports, p. 54

jealousy.—Your Committee is of opinion, that the honourable policy of avoiding suspicion by avoiding privacy, is not lessened by any thing which exists in the present time, and in the present trial.

Your Committee has here to remark, that this learned Judge seemed to think the case of Lord Audley [Castlehaven] to be more against him than in truth it was. The precedents were as follow: the opinions of the Judges were taken three times. The first time by the Attorney General at Serjeants Inn antecedent to the trial.—The last time, after the Peers had retired to consult on their verdict.—The middle time *was during the trial itself*; and here the opinion was taken in open Court, agreeably to what your Committee contends to have been the usage ever since this resolution of the Judges. What was done before seemed to have passed *sub silentio*, and possibly through mere inadvertence.

Your Committee observes, that the precedents by them relied on, were furnished from times in which the judicial proceedings in Parliament, and in all our Courts, had obtained a very regular form. They were furnished at a period in which, Justice Blackstone remarks, that more laws were passed, of importance to the rights and liberties of the subject, than in any other. These precedents lean all one way, and carry no marks of accommodation to the variable spirit of the times, and of political occasions. They are the same before and after the Revolution. They are the same through five reigns. The great men, who presided in the tribunals which furnished these examples, were in opposite political interests, but all distinguished for their ability, integrity, and learning.

The Earl of Nottingham, who was the first on the Bench to promulgate this publicity as a rule, has not left us to seek the principle in the case: that very learned man considers the publicity of the questions and answers as a matter of justice, *and of justice favourable to the prisoner*. In the case of Mr. Hastings, the prisoner's Counsel did not join your Committee in their endeavours to obtain the publicity we demanded. Their reasons we can only conjecture. But your Managers, acting for this House, were not the less bound to see that the due Parliamentary course should be pursued, even when it is most favourable to those whom they impeach. It it should answer the purpose of one prisoner to waive the rights which belong to all

prisoners, it was the duty of your Managers to protect those general rights against that particular prisoner. It was still more their duty to endeavour, that their *own* questions should not be erroneously stated, or cases put which varied from those which they argued, or opinions given in a manner not supported by the spirit of our laws and institutions, or by analogy with the practice of all our Courts.

Your Committee, much in the dark about a matter in which it was so necessary that they should receive every light, have heard, that in debating this matter abroad, it has been objected, that many of the precedents on which we most relied were furnished in the Courts of the Lord High Steward, and not in trials where the Peers were judges; and that the Lord High Steward not having it in his power to retire with the Juror Peers, the Judges opinions, from necessity, not from equity to the parties, were given before that magistrate.

Your Committee thinks it scarcely possible, that the Lords could be influenced by such a feeble argument. For, admitting the fact to have been as supposed, there is no sort of reason why so uniform a course of precedents, in a legal Court, composed of a Peer for judge, and Peers for triers—a course so favourable to all parties and to equal justice—a course in concurrence with the procedure of all our other Courts, should not have the greatest authority over their practice in every trial before the *whole body* of the Peerage.

The Earl of Nottingham, who acted as High Steward in one of these commissions, certainly knew what he was saying. He gave no such reason. His argument for the publicity of the Judges' opinions did not turn at all on the nature of his Court, or of his office in that Court. It rested on the equity of the principle, and on the fair dealing due to the prisoner.

Lord Somers was in no such Court; yet his declaration is full as strong. He does not indeed argue the point, as the Earl of Nottingham did when he considered it as a new case. Lord Somers considers it as a point quite settled—and no longer standing in need of being supported by reason or precedent.

But it is a mistake, that the precedents stated in this Report are wholly drawn from proceedings in that kind of Court. Only two are cited, which are furnished from a Court constituted in the manner supposed. The rest were in trials by all the Peers,

and not by a Jury of Peers with an High Steward.

After long discussions with the Peers on this subject, "the Lords Committees in a conference told them [the Committee of this House, appointed to a conference on the matter], that the High Steward is but Speaker *pro tempore*, and giveth his vote as well as the other Lords: this changeth not the nature of the Court. And the Lords declared, that they have power enough to proceed to trial, though the King should not name an High Steward*." On the same day, It is declared and ordered, by the Lords Spiritual and Temporal in Parliament assembled, that the office of High Steward on trials of Peers upon impeachments is not necessary to the House of Peers—but that the Lords may proceed in such trials, if an High Steward is not appointed, according to their humble desire."

To put the matter out of all doubt, and to remove all jealousy on the part of the Commons, the commission of the Lord High Steward was then altered.

These rights contended for by the Commons in their impeachments, and admitted by the Peers, were asserted in the proceedings preparatory to the trial of Lord Stafford, in which that long chain of uniform precedents, with regard to the publicity of the Judges opinions in trials, begins.

For these last citations, and some of the remarks, your Committee are indebted to the learned and upright Justice Foster. They have compared them with the Journals, and find them correct. The same excellent author proceeds to demonstrate, that whatever he says of trials by impeachment, is equally applicable to trials before the High Steward on indictment; and consequently that there is no ground for a distinction, with regard to the public declaration of the Judges opinions, founded on the inapplicability of either of these cases to the other. The argument on this whole matter is so satisfactory, that your Committee has annexed it at large to their Report†. As there is no difference in fact between these trials (especially since the Act which provides that all the Peers shall be summoned to the trial of a Peer), so there is no difference in the reason and principle of the publicity, let the matter of the Steward's jurisdiction be as it may.

PUBLICITY GENERAL.

Your Committee do not find any positive law which binds the Judges of the

Courts in Westminster-hall publicly to give a reasoned opinion from the Bench, in support of their judgment upon matters that are stated before them. But the course hath prevailed from the oldest times. It hath been so general and so uniform, that it must be considered as the law of the land. It has prevailed so far as we can discover, not only in all the Courts which now exist, whether of law or equity, but in those which have been suppressed or disused, such as the Court of Wards and the Star-Chamber. An author, quoted by Rushworth, speaking of the constitution of that Chamber, "And so it was resolved, by the Judges, on reference made to them; and their opinion, after deliberate bearing, and view of former precedents, was published in open Court‡." It appears elsewhere in the same compiler, that all their proceedings were public, even in deliberating previous to judgment.

The Judges in their reasonings have always been used to observe on the arguments employed by the Counsel on either side; and on the authorities cited by them, assigning the grounds for rejecting the authorities which they reject, or for adopting those to which they adhere, or for a different construction of law, according to the occasion. This publicity, not only of decision but of deliberation, is not confined to their several Courts, whether of law or equity, whether above, or at Nisi Prius, but it prevails where they are assembled in the Exchequer Chamber, or at Serjeants Inn, or wherever matters come before the Judges collectively for consultation and revision.—It seems to your Committee to be moulded in the essential frame and constitution of British Judicature.

Your Committee conceives, that the English jurisprudence has not any other sure foundation, nor consequently the lives and properties of the subject any sure hold, but in the maxims, rules, and principles, and juridical traditionary line of decisions contained in the notes taken, and from time to time published (mostly under the sanction of the Judges), called Reports.

In the early periods of the law it appears to your Committee, that a course still better had been pursued, but grounded on the same principles; and that no other cause than the multiplicity of business prevented its continuance. "Of ancient time (says Lord Coke) in cases of difficulties, either criminal or civil, the reasons and causes of the judgment were let down upon the Record, and so continued in

* Foster's Crown Law, p. 145.

† Rushworth, Vol. II. p. 475. & passim.

‡ See the Appendix, No. 1.

the reigns of Ed. I. and Ed. II. and then there was no need of Reports; but in the reign of Ed. III. (when the law was in his height) the causes and reasons of judgments, in respect of the multitude of them, are not set down in the Record; but then the *great casuists and reporters of cases* (certain grave and sad men) published the cases, and the reasons and causes of the judgments or resolutions, which, from the beginning of the reign of Ed. III. and since, we have in print. But these also, though of great credit and excellent use in their kind, yet far underneath the authority of the *Parliament Rolls, reporting the acts, judgments, and resolutions of that biggest Court*.*

Reports, though of a kind less authentic than the *Treat Books* to which Coke alludes, have continued without interruption to the time in which we live. It is well known, that the elementary treatises of law, and the dogmatical treatises of English jurisprudence, whether they appear under the names of Institutes, Digests, or Commentaries, do not rest on the authority of the supreme power, like the book called the *Institute, Digest, Code, and authentic Collections in the Roman law*. With us, doctrinal books of that description have little or no authority, other than as they are supported by the adjudged cases and reasons given at one time or other from the Bench; and to these they constantly refer. This appears in Coke's Institutes, in Comyns's Digest, and in all books of that nature. To give judgment privately is to put an end to Reports; and to put an end to Reports, is to put an end to the law of England. It was fortunate for the Constitution of this kingdom, that in the judicial proceedings on the case of ship-money, the Judges did not then venture to depart from the ancient course. They gave and they argued their judgment in open Court†. Their reasons were publicly given, and the reasons assigned for their judgment took away all its authority.

The great historian, Lord Clarendon, at that period a young lawyer, has told us, that the Judges gave as law from the Bench what every man in the Hall knew not to be law.

This publicity, and this mode of attending the decision with its grounds, is not observed only in the tribunals where the Judges preside in a judicial capacity individually or collectively, but where they are consulted by the Peers, on the law in all

writs of error brought from below. In the opinion they give of the matter assigned as error, one at least of the Judges argues the questions at large. He argues them publicly, though in the Chamber of Parliament; and in such a manner that every professor, practitioner, or student of the law, as well as the parties to the suit, may learn the opinions of all the Judges of all the Courts upon those points, in which the Judges in one Court might be mistaken.

Your Committee is of opinion, that nothing better could be devised by human wisdom than argued judgments publicly delivered, for preserving unbroken the great traditionary body of the law, and for marking, whilst that great body remained unaltered, every variation in the application and the construction of particular parts; for pointing out the ground of each variation; and for enabling the learned of the bar and all intelligent laymen to distinguish those changes made for the advancement of a more solid, equitable, and substantial justice, according to the variable nature of human affairs, a progressive experience, and the improvement of moral philosophy, from those hazardous changes in any of the ancient opinions and decisions, which may arise from ignorance, from levity, from false refinement, from a spirit of innovation, or from other motives, of a nature not more justifiable.

Your Committee, finding this course of proceeding to be concordant with the character and spirit of our judicial proceeding, continued from time immemorial, supported by arguments of sound theory, and confirmed by effects highly beneficial, could not see without uneasiness, in this great trial for Indian offences, a marked innovation. Against their reiterated requests, remonstrances, and protestations, the opinions of the Judges were always taken secretly.

Not only the constitutional publicity for which we contend, was refused to the request and entreaty of your Committee; but when a noble Peer, on the 24th day of June 1789, did in open Court declare, that he would then propose some questions to the Judges in that place, and hoped to receive their answer openly, according to the approved good customs of that and of other courts—the Lords instantly put a stop to the further proceeding by an immediate adjournment to the Chamber of Parliament.

Upon this adjournment we find by the *Lords' Journals*, that the House on being resumed, ordered, that "it should resolve

* Coke, 4 Inst. p. 5.

† This is confined to the judicial opinions in *Hampden's case*. It does not take in all the extra-judicial opinions.

"itself into a Committee of the whole House on Monday next, to take into consideration what is the proper manner of putting questions by the Lords to the Judges, and of their answering the same, in judicial proceedings."

The House did thereon resolve itself into a Committee, from which the Earl of Galloway, on the 29th of the same month, reported as follows: "That the House has, in the Trial of Warren Hastings, Esquire, proceeded in a regular course in the manner of propounding their questions to the Judges in the Chamber of Parliament, and in receiving their answers to them in the same place."

The Resolution was agreed to by the Lords; but the Protest (as below)* was entered thereupon, and supported by strong arguments.

Your Committee remark, that this Resolution states only, that the House had proceeded in this secret manner of propounding questions to the Judges, and of receiving their answers during the Trial, and on matters of debate between the parties, "in a regular course." It does not assert that another course would not have been as regular. It does not state either judicial convenience, principle, or body of precedents for that *regular course*. No such body of precedents appear on the journal that we could discover. Seven- and twenty, at least, in a regular series, are directly contrary to this regular course.

* *Dissentient,*

1st. Because, by consulting the Judges out of Court in the absence of the parties, and with shut doors, we have deviated from the most approved, and almost uninterrupted, practice of above a century and a half, and established a precedent not only destructive of the justice due to the parties at our bar, but materially injurious to the rights of the community at large, who in cases of impeachments are more peculiarly interested that all proceedings of this High Court of Parliament should be open and exposed, like all other Courts of Justice, to public observation and comment, in order that no covert and private practices should defeat the great ends of public justice.

2dly. Because, from private opinions of the Judges, upon private statements, which the parties have neither heard nor seen, grounds of a decision will be obtained, which must inevitably affect the cause at issue at our Bar; this mode of proceeding seems to be a violation of the first principle of justice, inasmuch as we thereby force and confine the opinions of the Judges to our private statement; and through the medium of our subsequent decision we transfer the effect of those opinions to the parties, who have been deprived of the right and advantage of being heard by such private, though unintended, transmutation of the point at issue.

3dly. Because the prisoners who may hereafter have the misfortune to stand at our Bar will be deprived of that consolation which the Lord High Steward Nottingham conveyed to the prisoner, Lord Cornwallis, viz. "That the Lords have that tender regard of a prisoner at the Bar, that they will not suffer a case to be put in his absence, lest it should prejudice him by being wrong stated."

4thly. Because unusual mystery and secrecy in our judicial proceedings must tend either to discredit the acquittal of the prisoner, or render the justice of his condemnation doubtful.

PORCHESTER.

SUFFOLK and BERKSHIRE.

LOUGHBOROUGH.

Since the sera of the 29th of June 1789, no one question has been admitted to go publicly to the Judges.

This determined and systematic privacy was the more alarming to your Committee, because the questions did not (except in that case) originate from the Lords for the direction of their own conscience. These questions, in some material instances, were not made or allowed by the parties at the Bar, nor settled in open Court, but differed materially from what your Managers contended was the true state of the question, as put and argued by them. They were such as the Lords thought proper to state for them. Strong remonstrances produced some alteration in this particular; but even after these remonstrances, several questions were made, on statements which the Managers never made nor admitted.

Your Committee does not know of any precedent before this, in which the Peers, on a proposal of the Commons, or of a less weighty person before their Court, to have the cases publicly referred to the Judges, and their arguments and resolutions delivered in their presence, absolutely refused. The very few precedents of such private reference on Trials, have been made, as we have observed already, *sub silentio*, and without any observation from the parties.

In the precedents we produce, the determination is accompanied with its reasons, and the publicity is considered as the clear undoubted right of the parties.

Your Committee, using their best diligence, have never been able to form a clear opinion upon the ground and principle of these decisions. The mere result upon each case decided by the Lords, furnished them with no light from any principle, precedent, or foregone authority of law or reason, to guide them with regard to the next matter of evidence which they had to offer, or to discriminate what matter ought to be urged, or to be set aside; your Committee not being able to divine, whether the particular evidence, which, upon a conjectural principle, they might choose to abandon, would not appear to this House, and to the judging world at large, to be admissible, and possibly decisive proof. In these straits they had and have no choice, but either wholly to abandon the prosecution, and of consequence to betray the trust reposed in them by this House, or to bring forward such matter of evidence as they are furnished with from sure sources of authenticity, and which in their judgment, aided by the best advice they could obtain, is possessed of a moral aptitude judiciously to prove or to illustrate the case which the House had given them in charge.

MODE OF PUTTING THE QUESTIONS.

When your Committee came to examine into private opinions of the Judges, they found, to their no small concern, that the mode both of putting the questions to the Judges, and their answers, was still more unusual and unprecedented than the privacy with which those questions were given and resolved.

This mode strikes, as we apprehend, at the vital privileges of the House. For, with the single exception of the first question put to the Judges in 1788, the case being stated, the questions are asked directly, specifically, and by name, on those privileges; that is, *what evidence is it competent for the Managers of the House of Commons to produce?*

We conceive, that it was not proper, nor justified by a single precedent, to refer to the Judges of the inferior Courts any question, and still let for them to decide in their answer, of what is or is not competent for the House of Commons, or for any Committee acting under their authority, to do, or not to do, in any instance or respect whatsoever. This new and unheard of course can have no other effect than to subject to the discretion of the Judges the law of Parliament and the privileges of the House of Commons, and in a great measure the judicial privileges of

the Peers themselves; any intermeddling in which on their part, we conceive to be a dangerous and unwarrantable assumption of power. It is contrary to what has been declared by Lord Coke himself, in a passage before quoted, to be the duty of the Judges; and to what the Judges of former times have confessed to be their duty, on occasions to which he refers, in the time of Henry the Sixth. And we are of opinion, that the conduct of those Judges of the law, and others their successors, who have been thus diffident and cautious in giving their opinions upon matters concerning Parliament, and particularly on the privileges of the House of Commons, was laudable in the example, and ought to be followed; particularly the principles upon which the Judges declined to give their opinions in the year 1614. It appears by the Journals of the Lords, that a question concerning the law relative to impositions having been put to the Judges, the proceeding was as follows:

“Whether the Lords, the Judges, shall be heard deliver their opinion, touching the point of impositions, before further consideration be had of answer to be returned to the Lower House, concerning the message from them lately received.

“Whereupon the number of the Lords, requiring to hear the Judges opinions by saying “*Content*,” exceeding the others which said “*Non Content*,” the Lords, the Judges, to desiring were permitted to withdraw themselves into the Lord Chancellor’s private rooms; where having remained awhile, and advised together, they returned into the House, and having taken their places, and standing discovered, did by the mouth of the Lord Chief Justice of the King’s Bench, humbly desire to be borne at this time, in this place, to deliver any opinion in this case, for many weighty and important reasons, which his Lordship delivered with great gravity and eloquence; concluding, that himself and his brethren are upon particulars in judicial course to speak and judge between the King’s Majesty and his people, and likewise between his Highness’s subjects, and in no case to be disputants on any side.”

Your Committee do not find any thing which, through inadvertence or design, had a tendency to subject the law and course of Parliament to the opinions of the Judges of the inferior Courts, from that period until the reign of James the Second.

The

The Trial of Lord Delamere for high treason was had by special commission before the Lord High Steward: it was before the act which directs that *all Peers should be summoned to such Trials*. This was not a Trial in full Parliament, in which case it was then contended for, that the Lord High Steward was the Judge of the Law, presiding in the Court, but had no vote in the verdict; and that the Lords were Triers only, and had no vote in the judgment of Law. This was looked on as the course, where the Trial was not in full Parliament, in which latter case there was no doubt but that the Lord High Steward made a part of the body of the Triers, and that the whole House was the Judge*.

In this cause, after the evidence for the Crown had been closed, the Prisoner prayed the Court to adjourn. The Lord High Steward doubted his power to take that step in that stage of the Trial; and the question was, "Whether, the Trial not being in full Parliament, when the Prisoner is upon his Trial, and Evidence for the King is given, the Lords being (as it may be termed) charged with the Prisoner, the Peers may separate for a time, which is the consequence of an adjournment?"

The Lord High Steward doubted of his power to adjourn the Court. The case was evidently new, and his Grace proposed to have the opinion of the Judges upon it. The Judges, in consequence, wishing to withdraw into the Exchequer Chamber, Lord Falconberg "insisted that the question concerned the Privilege of the Peerage only, and conceived that the Judges are not concerned to make any determination in that matter; and being such a point of Privilege, certainly the inferior Courts have no right to determine it." It was insisted, therefore, that the Lords Triers should retire with the Judges. The Lord High Steward thought differently, and opposed this motion; but, finding the other opinion generally prevalent, he gave way, and the Lords Triers retired, taking the Judges to their consult.

When the Judges returned, they delivered their opinion in open Court.

Lord Chief Justice Herbert spoke for himself and the rest of the Judges. After observing on the novelty of the case, with a temperate and becoming reserve with regard to the Rights of Parliaments, he marked out the limits of the office of the

inferior Judges on such occasions, and declared, "*All that we, the Judges, can do, is to acquaint your Grace and the Noble Lords, what the Law is in inferior Courts in cases of the like nature, and the reason of the Law in those points, and then leave the jurisdiction of the Court to its proper judgment.*" The Chief Justice concluded his statement of the usage below, and his observations on the difference of the cases of a Peer tried in full Parliament and by a special commission, in this manner:

"Upon the whole matter, my Lords, whether the Peers, being Judges in the one and not in the other instance, alters the case, or whether the reason of the Law in inferior Courts, why the Jury are not permitted to separate until they have discharged themselves of their verdict, may have any influence on this case, where that reason seems to fail, the Prisoner being to be tried by men of unquestionable honour, we cannot presume so far as to make any determination in a case which is both new to us, and of great consequence in itself; but think it the proper way for us, having laid matters as we conceive them before your Grace and my Lords, to submit the jurisdiction of your own Court to your own determination."

It appears to your Committee, that the Lords, who stood against submitting the Course of their High Court to the inferior Judges, and that the Judges who, with a legal and constitutional discretion, declined giving any opinion in this matter, acted as became them; and your Committee sees no reason why the Peers at this day should be less attentive to the rights of their Court with regard to an exclusive judgment on their own proceedings, or to the rights of the Commons acting as accusers for the whole Commons of Great Britain in that Court, or why the Judges should be less reserved in deciding upon any of these points of high Parliamentary Privilege, than the Judges of that and the preceding periods. This present case is a proceeding in full Parliament, and not like the case under the Commission in the time of James the Second, and still more evidently out of the province of the Judges in the inferior Courts.

All the precedents previous to the Trial of Warren Hastings, Esquire, seem to your Committee to be uniform. The Judges had consistently refused to give an opinion on any of the powers, privileges, or com-

* See the Lord High Steward's Speech on that Head, 1st J. 2.

petencies of either House. But in the present instance your Committee has found, with great concern, a further matter of innovation.

Hitherto the constant practice has been to put questions to the Judges, but in the three following ways: as,

1st, A question of pure abstract law, without reference to any case, or merely upon an A. B. case stated to them.

2dly, To the legal construction of some act of Parliament.

3dly, To report the course of proceeding in the Courts below upon an abstract case.

Besides these three, your Committee knows not of a single example of any sort, during the course of any judicial proceeding at the Bar of the House of Lords, whether the prosecution has been by Indictment, by Information from the Attorney General, or by Impeachment of the House of Commons.

In the present Trial, the Judges appear to your Committee not to have given their judgment on points of Law stated as such, but to have in effect tied the cause, in the whole course of it, with one instance to the contrary.

The Lords have stated no question of general Law; no question on the construction of an act of Parliament; no question concerning the practice of the Courts below. They put *the whole gross case, and matter in question, with all its circumstances, to the Judges*. They have, for the first time, demanded of them what particular person, paper, or document, ought, or ought not, to be produced before them by the Managers for the Commons of Great Britain. For instance, whether, under such an Article, the Bengal Consultations of such a day, the examination of Rajah Nundcomar, and the like.

The operation of this method is, in substance, not only to make the Judges masters of the whole process and conduct of the Trial, but through that medium to transfer to them the ultimate judgment on the cause itself and its merits.

The Judges attendant on the Court of Peers, hitherto, have not been supposed to know the particulars and minute circumstances of the cause, and must therefore be incompetent to determine upon those circumstances. The evidence taken is not of course, that we can find, delivered to them; nor do we find that, in fact, any order has been made for that purpose, even supposing that the evidence could at all regularly be put before them.

They are present in Court, not to hear the Trial, but solely to advise in matter of Law—they cannot take upon themselves to say any thing about the Bengal Consultations, or to know any thing of Rajah Nundcomar, of Kellaram, or of Mr. Francis, or Sir John Clavering.

That the House may be the more fully enabled to judge of the nature and tendency of thus putting the question *specifically and on the gross case*, your Committee thinks fit here to insert one of those questions, reserving a discussion of its particular merits to another place. It was stated on the 22d of April 1790. "On that day the Managers propoed to shew, that Kellaram fell into great balances with the East-India Company in consequence of his appointment."—It is so stated in the printed Minutes (p. 1206); but the real tendency and gift of the proposition is not shewn—However, the question was put, "Whether it be or be not competent to the Managers for the Commons to give evidence upon the charge in the Sixth Article, to prove that the rent at which the defendant, Warren Hastings, let the lands mentioned in the said sixth Article of Charge to Kellaram, fell into arrear and was deficient? and, Whether, if proof were offered that the rent fell into arrear immediately after the letting, the evidence in that case would be competent?"

The Judges answered, on the 27th of the said month, as follows: *It is not competent for the Managers for the House of Commons to give evidence upon the charge in the Sixth Article, to prove that the rent at which the defendant, Warren Hastings, let the lands in the said Sixth Article of Charge to Kellaram, fell into arrear and was deficient.*"

The House will observe, that on the question two cases of competence were put: the first on the competence of Managers for the House of Commons to give the evidence supposed to be offered by them, but which we deny to have been offered in the manner and for the purpose assumed in this question: the second is in a shape apparently more abstracted, and more nearly approaching to Parliamentary regularity—on the competence of the evidence itself, in the case of a supposed circumstance being superadded. The Judges answered only the first, denying flatly the competence of the Managers. As to the second, the competence of the supposed evidence, they are profoundly silent. Having given this blow to our competence,

tence, about the other question (which was more within their province), namely, the competence of evidence on a case hypothetically stated, they give themselves no trouble. The Lords on that occasion rejected the whole evidence. On the face of the Judges' opinion, it is a determination *on a case*, the trial of which was not with them, but it contains *no rule or principle of Law*, to which alone it was their duty to speak*.

These essential innovations tend, as your Committee conceives, to make an entire alteration in the Constitution and in the purposes of the High Court of Parliament, and even to reveal the ancient relations between the Lords and the Judges.

It tends wholly to take away from the Commons the benefit of making good their case before the proper Judges, and submits this high Iniquity to the inferior Courts.

Your Committee sees no reason why, on the same principles and precedents, the Lords may not terminate their proceedings in this and in all future trials, by sending the whole body of evidence taken before them, in the shape of a special verdict, to the Judges, and may not demand of them, whether they ought, on the whole matter, to acquit or condemn the Prisoner; nor can we discover any cause that should hinder them from deciding on the accumulative body of the evidence, as hitherto they have done in its parts, and from dictating the existence or non-existence of a misdemeanor or other crime in the Prisoner, as they think fit,—without any more reference to principle or precedent of Law, than hitherto they have thought proper to apply in determining on the several parcels of this cause.

Your Committee apprehends, that very serious inconveniences and mischiefs may hereafter arise from a practice in the House of Lords, of considering itself as unable to act without the Judges of the inferior Courts, of implicitly following their dictates, of adhering with a literal precision to the very words of their responses, and putting them to decide on the competence of the Managers for the Commons,—the competence of the evidence to be produced,—who are to be permitted to appear,—what questions are to be asked of witnesses, and indeed, parcel by parcel, on the whole of the gross case before them; as well as to determine upon the order, method, and process of every part of their proceedings.

The Judges of the inferior Courts are by Law rendered independent of the Crown. But this, instead of a barrier to the subject, would be a grievance, if no way was left of producing a responsibility. If the Lords cannot or will not act without the Judges, and if (which God forbid!) the Commons should find it at any time hereafter necessary to impeach them before the Lords; this House would find the Lords disabled in their functions, fearful of giving any judgment on matter of Law, or admitting any proof of fact without them; and having once assumed the rule of proceeding and practice below as their rule, they must at every instant resort, for their means of judging, to the authority of those whom they are appointed to judge.

Your Committee must always act with regard to men as they are. There are no privileges or exemptions from the infirmities of our common nature. We are sensible that all men, and without any evil intentions, will naturally wish to extend their own jurisdiction, and to weaken all the power by which they may be limited and controlled. It is the business of the House of Commons to counteract this tendency. This House had given to its Managers no power to abandon its privileges and the rights of its Constituents: They were themselves as little disposed as authorized to make this surrender. They are Members of this House, not only charged with the management of this Impeachment, but partaking of a general trust, inseparable from the Commons of Great Britain in Parliament assembled, one of whose principal functions and duties it is, to be observant of the Courts of Justice, and to take due care that none of them, from the lowest to the highest, shall pursue new courses unknown to the Laws and Constitution of this Kingdom, or to Equity, sound legal Policy, or substantial Justice.

Your Committee were not sent into Westminster Hall for the purpose of contributing, in their persons, and under the authority of the House, to change the Course or Law of Parliament, which had continued unquestioned for at least four hundred years. Neither was it any part of their mission to suffer precedents to be established with relation to the Law and Rule of Evidence, which tended in their opinion to shut up for ever all the avenues to Justice. They were not to consider a Rule of Evidence as a means of Conceal-

* All the Resolutions of the Judges, to the time of the Reference to the Committee, are in the APPENDIX, No. II.

ment. They were not, without a struggle, to their own subtleties to prevail, which would be a process in Parliament, not a protest, but the protection, for all the fraud and violence arising from the abuse of British Power in the East. Accordingly, your Managers contended with all their might, as their Predecessors in the same place had contended with more ability and learning, but not with more zeal and more firmness, against those dangerous innovations as they were successively introduced: they held themselves bound constantly to protest, and in one or two instances they did protest, in discourses of considerable length, against those private, and, for what they could find, unargued judicial opinions, which must, as they fear, introduce by degrees the miserable servitude which exists where the Law is uncertain or unknown.

DEBATES ON EVIDENCE.

The chief debates at the Bar, and the decisions of the Judges (which we find in all cases implicitly adopted in all their extent, and without qualification, by the Lords), turned upon *Evidence*. Your Committee, before the Trial began, were apprized, by discourses which prudence did not permit them to neglect, that endeavours would be used to embarrass them in their proceedings by exceptions against Evidence; that the judgments and opinions of the Courts below would be resorted to on this subject; that these the Rules of Evidence were precise, rigorous, and inflexible; and that the Counsel for the Criminal would endeavour to introduce the same Rules, with the same severity and exactness, into this Trial.

Your Committee were fully assured, and were resolved strenuously to contend, that no Doctrine or Rule of Law, much less the Practice of any Court, ought to have weight or authority in Parliament, further than as such Doctrine, Rule, or Practice, is agreeable to the Proceedings in Parliament, or hath received the sanction of approved precedent there, or is founded on the immutable principles of substantial Justice, without which, your Committee readily agree, no Practice in any Court, high or low, is proper or fit to be maintained.

In this preference of the Rules observed in the High Court of Parliament, pre-eminently superior to all the rest, there is no claim made which the inferior Courts do not make each with regard to itself. It is well known, that the Rules of Proceedings in these Courts vary, and some

of them very essentially; yet the Usage of each Court is the Law of the Court, and it would be vain to object to any Rule in any Court that is not the Rule of another Court. For instance, as a general Rule, the Court of King's Bench, on Trials by Jury, cannot receive depositions, but must judge by testimony *visà voce*. The Rule of the Court of Chancery is not only not the same, but it is the reverse, and Lord Hardwicke ruled accordingly. "The constant and established Proceedings of this Court," said this great Magistrate, "are on written Evidence," like the Proceedings on the Civil and Canon Law. "This is the Course of the Court, and the Course of the Court is the Law of the Court."—Atkins, Vol. i. p. 416.

Your Managers were convinced, that one of the principal reasons for which this Cause was brought into Parliament, was the danger that in inferior Courts their Rule would be formed naturally upon their ordinary experience and the exigencies of the cases which in ordinary course came before them. This experience, and the exigencies of these cases, extend little further than the concerns of a People comparatively in a narrow vicinage—a People of the same or nearly the same language, religion, manners, laws, and habits,—with them an intercourse of every kind, was easy.

That Rules of Law in most cases, and the Practice of the Courts in all, could not be easily applicable to a People separated from Great Britain by a very great part of the Globe; separated by manners, by principles of religion, and of inveterate habits as strong as Nature itself, still more than by the circumstance of local distance. Such confined and inapplicable Rules would be convenient indeed to oppression, to extortion, bribery, and corruption, but ruinous to the People whose protection is the true object of all Tribunals, and of all their Rules. Even English Judges in India, who have been sufficiently tenacious of what they considered as the Rules of English Courts, were obliged in many points, and particularly with regard to Evidence, to relax very considerably, as the Civil and Politic Government has been obliged to do in several other cases, on account of insuperable difficulties arising from a great diversity of manners, and from what may be considered as a diversity even in the very constitution of their minds; instances of which your Committee will subjoin in a future Appendix.

Another

Another great cause why your Committee conceived this House had chosen to proceed in the High Court of Parliament, was because the inferior Courts were habituated, with very few exceptions, to try men for the abuse only of their individual and natural powers, which can extend but a little way. Before them, offences, whether of fraud or violence, or both, are, for much the greater part, charged upon persons of mean and obscure condition. Those unhappy persons are so far from being supported by men of rank and influence, that the whole weight and force of the community is directed against them. In this case, they are in general objects of protection as well as of punishment; and the Course perhaps ought, as it is *commonly* said to be, not to suffer any thing to be applied to their conviction beyond what the strictest Rules will permit*. But in the Cause which your Managers have in charge, the circumstances are the very reverse to what happens in the cases of mere personal delinquency which come before the Courts. These Courts have not before them persons who act, and who justify their acts, by the nature of a despotical and arbitrary power. The abuses stated in our Impeachment, are not those of mere individual, natural faculties, but ~~the~~ abuses of civil and political authority. The offence is that of One who has carried with him, in the perpetration of his crimes, whether of violence or of fraud, the whole force of the State;—who, in the perpetration and concealment of offences, has had the advantage of all the means and powers given to Government for the detection and punishment of guilt, and for the protection of the People. The People themselves, on whose behalf the Commons of Great Britain take up this remedial and protecting prosecution, are naturally timid. Their spirits are broken by the arbitrary power usurped over them, and claimed by the Delinquent as his Law. They are ready to flatter the power which they dread. They are apt to look for favour by covering those vices in the Predecessor which they fear the Successor may be disposed to imitate. They have reason to consider complaints as means not of redress, but of aggravation to their sufferings; and when they shall ultimately hear that the nature of the British Laws, and the Rules of its Tribunals, are such as by no care or study either they, or even the Commons of Great Britain, who take up their cause, can comprehend, but which

in effect and operation, are an unprotected, and render themselves secure in their spoils. They think still worse of British Justice, than the arbitrary power of the *Chancery* servants, which hath been exercised to their destruction. They will be for ever, what for the greater part they have hitherto been, inclined to compromise with the corruption of the Magistrates, as a screen against that violence from which the Laws afford them no redress.

For these reasons, your Committee did, and do, strongly contend, that the Court of Parliament ought to be open with great facility to the production of all Evidence, except that which the Precedents of Parliament teach them authoritatively to reject, or which hath no sort of natural aptitude directly or circumstantially to prove the case. They have been and are invariably of opinion, that the Lords ought to *enlarge, and not to contract, the Rules of Evidence, according to the nature and difficulties of the case*, for redress to the injured, for the punishment of oppression, for the detection of fraud, and, above all, to prevent what is the greatest dishonour to all Laws and to all Tribunals,—the failure of Justice. To prevent the last of these evils, all Courts in this and all Countries have constantly made all their maxims and principles concerning Testimony to conform; although such Courts have been bound, undoubtedly, by stricter Rules, both of form and of prescript cases, than the sovereign jurisdiction exercised by the Lords on the Impeachment of the Commons ever has been or ever ought to be. Therefore your Committee doth totally reject any Rules by which the Practice of any inferior Court is affirmed as a directory guide to an higher, especially where the Forms and the Powers of the Judicature are different, and the Objects of judicial enquiry are not the same.

Your Committee conceives, that the trial of a cause is not in the arguments or disputations of the Prosecutors and the Counsel, but in the Evidence, and that to refuse Evidence is to refuse to hear the cause; nothing, therefore, but the most clear and weighty reasons ought to preclude its production. Your Committee conceived, that when Evidence, on the face of it relevant, that is connected with the Party and the Charge, was denied to be competent, *the burden lay upon those who opposed it*, to set forth the authorities, whether of positive Statute, known recog-

principles of Law, and the Institute, Code, Digest, Treatise of Laws, or other authorities, wherein the Courts have received Evidence of that nature. No such thing ever (except in one instance, to which we shall hereafter speak) was produced at the Bar, nor (that we know of) produced by the Lords in their Debates, or by the Judges in the Opinions by them delivered. Therefore, for any thing which as yet appears to your Committee to the contrary, these responses and decisions were, in many of the points, not the determinations of any Law whatsoever, but mere arbitrary decrees, to which we could not without solemn protestation submit.

Your Committee, at an early period, and frequently since the commencement of this Trial, have neglected no means of research which might afford them information concerning these supposed strict and inflexible Rules of Proceeding and of Evidence, which appeared to them destructive of all the means and ends of Justice.

And, first, they examined carefully the Rolls and Journals of the House of Lords, as also the printed Trials of Cases before that Court.

Your Committee finds but one instance, in the whole course of Parliamentary Impeachments, in which Evidence offered by the Commons has been rejected on the plea of Inadmissibility or Incompetence. This was in the case of Lord Stafford's Trial*; when the copy of a warrant (the same not having any attestation to authenticate it as a true copy) was, on deliberation, not admitted, and, as your Committee thinks, as the case stood, with reason. But even in this one instance the Lords seemed to shew a marked anxiety not to narrow too much the Admissibility of Evidence, for they confined their determination "to this individual case," as the Lord Steward reported their Resolution; and he adds, "they conceive this could be no impediment or failure in the proceeding, because the truth and verity of it would depend on the first general power given to execute it, which they who manage the Evidence for the Commons say they could prove†."—Neither have objections to Evidence offered by the Prisoner been very frequently

made, nor often allowed when made. In the same case of Lord Stafford, two books produced by his Lordship, without proof by whom they were written, were rejected (and on a clear principle) "as being private books, and no records‡."—On both these occasions, the questions were determined by the Lords alone, without any resort to the opinions of the Judges. In the Impeachments of Lord Stafford, Dr. Sacheverell, and Lord Win-toun, no objection to Evidence appears in the Lords' Journals to have been pressed, and not above one taken, which was on the part of the Managers.

Several objections were indeed taken to evidence in Lord Macclesfield's Trial§. They were made on the part of the Managers, except in two instances, where the objections were made by the witnesses themselves. They were all determined (those started by the Managers in their favour) by the Lords themselves, without any reference to the Judges. In the discussion of one of them, a question was stated for the Judges concerning the Law, in a similar case upon an information in the Court below; but it was set aside by the previous question¶.

On the impeachment of Lord Lovat||, no more than one objection to Evidence was taken by the Managers, against which Lord Lovat's Counsel were not permitted to argue. Three objections on the part of the Prisoner were made to the Evidence offered by the Managers, but all without success. The instances of similar objections in Parliamentary Trials of Peers on Indictments, are too few and too unimportant to require being particularized;—one, that in the case of Lord Warwick has been already stated.

The principles of these precedents do not in the least affect any case of Evidence which your Managers had to support. The paucity and inapplicability of instances of this kind, convince your Committee that the Lords have ever used some latitude and liberality in all the means of bringing information before them—nor is it easy to conceive, that, as the Lords are, and of right ought to be, Judges of Law and Fact, many cases should occur (except those where a personal *viva voce* witness is denied to be competent) in which a Judge, possessing an entire judicial capacity, can determine by anticipation what is good

* Lords' Journals. Vol. iv. p. 204. An. 1641.

† Lords' Journals, Vol. iv. p. 210.

‡ Lords' Journals, Vol. xxii. p. 536. to 546. An. 1725.

§ lb. p. 541.

¶ Lords' Journals, Vol. xvii. p. 63. 65. Ann. 1746.

† Rush. Trial of Lord Stafford, p. 430.

evidence, and what not, before he has heard it. When he has heard it, of course he will judge what weight it is to have upon his mind, or whether it ought not entirely to be struck out of the proceedings.

Your Committee, always protesting, as before, against the admission of any law, foreign or domestic, as of authority in Parliament, further than as written reason, and the opinion of wise and informed men, has examined into the writers on the civil law, ancient and more recent, in order to discover what those rules of evidence, in any sort applicable to criminal cases, were, which were supposed to stand in the way of the trial of offences committed in India.

They find, that the term evidence, *evidentia*, from whence our's is taken, has a sense different in the Roman law, from what it is understood to bear in the English jurisprudence. The term most nearly answering to it in the Roman, being *probatio*, proof; which, like the term *evidence*, is a generic term, including every thing by which a doubtful matter may be rendered more certain to the Judge; or, as Gilbert expresses it, every matter is evidence which amounts to the proof of the point in question*.

On the general head of evidence or proof, your Committee finds, that much has been written by persons learned in the Roman law, particularly in modern times; and that many attempts have been made to reduce to rules the principles of evidence or proof, a matter which by its very nature seems incapable of that simplicity, precision, and generality, which are necessary to supply the matter, or to give the form to a rule of law. Much learning has been employed on the doctrine of indications and *presumptions*, in their books; far more than is to be found in our law.—Very subtle disquisitions were made, on all matters of jurisprudence in the times of the classical civil law, by the followers of the stoic school†. In the modern school of the same law, the same course was taken by Bartolus, Baldus, and the civilians who followed them, before the complete revival of literature‡. All the discussions to be found in those voluminous writings furnish undoubtedly an useful exercise to the mind, by methodizing the various forms in which one set of facts, or collection of facts, or the qualities or demeanour of persons, reciprocally influence each other; and, by this course of juridical dis-

cipline, they add to the readiness and sagacity of those who are to plead or to judge. But as human actions and human actions are not of a mathematical nature, but the subject is concrete, complex, and moral, they cannot be subjected (without exceptions which reduce it almost to nothing) to any certain rule. Their rules with regard to competence were many and strict, and our lawyers have mentioned it to their reproach. "The civilians (it has been observed) differ in nothing more than admitting evidence; for they reject Histriones, &c. and whole tribes of people§." But this extreme rigour as to competency, rejected by our law, is not found to extend to the *genus* of evidence, but only to a particular species—Personal witnesses. Indeed, after all their efforts to fix these things by positive and inflexible maxims, the best Roman lawyers in their best ages were obliged to confess, that every case of evidence rather formed its own rule, than that any rule could be adapted to every case: The best opinions, however, seem to have reduced the admissibility of witnesses to a few heads.—"For if," said Callistratus, in a passage preserved to us in the Digest, "the testimony is free from suspicion, either on account of the quality of the *person*, namely, that he is "in a reputable situation; or for *cause*," that is to say, that the testimony given is not for reward, nor favour, nor for enmity, such a witness is admissible. The first description goes to *competence*; between which and *credit*, Lord Hardwicke justly says, the discrimination is very nice: The other part of the text shews their anxiety to reduce credibility itself to a fixed rule. It proceeds therefore, "His sacred Majesty, Hadrian, issued a rescript to *Vivius Varus*, Lieutenant of Cilicia, to this effect, that he who sits in judgment is the most capable of determining what credit is to be given to witnesses." The words of the letter of rescript are as follow.—"You ought best to know what credit is to be given to witnesses,—who, and of what dignity, and of what estimation they are, whether they seem to deliver their evidence with simplicity and candour—whether they seem to bring a formed and premeditated discourse—or whether on the spot they give probable matter in answer to the questions that are put to them." And there remains a rescript of the same prince to *Valerius Varus* on the bringing out the credit of

* Gilbert's Law of Evidence, p. 23.

† Gravina, 84, 85.

‡ Id. 90, usque ad 100.

§ Atkins, Rep. Omicund

versus Barker, Vol. 1. p. 37.

witnesses. This appears to go more to the general principles of evidence. It is in their words, "What evidence, and in what measure or degree, shall amount to proof in each case, can be defined in no manner whatsoever that is sufficiently certain. For, though not always, yet frequently, the truth of the affair may appear without any matter of public record.—In some cases, the number of the witnesses, in others their dignity and authority, is to be weighed; in others, concurring public fame tends to confirm the credit of the evidence in question.—This alone I am able, and in a few words, to give you as my determination, that you ought not too readily to bind yourself to try the cause upon any one description of evidence; but you are to estimate by your own discretion what you ought to credit, or what appears to you not to be established by proof sufficient*."

The modern writers on the civil law have likewise much matter on this subject, and have introduced a strictness, with regard to personal testimony, which our particular jurisprudence has not thought it at all proper to adopt. In others we have copied them more closely. They divide evidence into two parts, in which they do not differ from the ancients. 1st. What is evidence, or proof by itself? 2dly. What is presumption, "which is a probable conjecture from a reference to something which, coming from marks and tokens ascertained, shall be taken for truth, until some other shall be adduced?" Again, they have laboured particularly to fix rules for presumptions, which they divide into, 1. Violent and necessary.—2. Probable.—3. and lastly, Slight and rash. But, finding that this head of presumptive evidence (which makes so large a part with them and with us in the trial of all causes, and particularly criminal causes) extremely difficult to ascertain, either with regard to what shall be considered as exclusively creating any of these three degrees of presumption, or what facts, and how proved,—and what marks and tokens may serve to establish them,—even those civilians, whose character it is to be subtle to a fault, have been obliged to abandon the task—and have fairly confessed, that the labours of writers to fix rules for these matters have been vain and fruitless†. One of the most able of them has said, "That the doctors of the law have written nothing of value concerning presump-

tions, nor is the subject matter such as to be reduced within the prescribed limit of any certain rules. In truth, it is from the actual existing case, and from the circumstances of the persons, and of the business, that we ought (under the guidance of an incorrupt judgment of the mind, which is called an equitable discretion) to determine what presumptions or conjectural proofs are to be admitted as rational, or rejected as false, or on which the understanding can pronounce nothing either the one way or the other‡."

It is certain, that whatever over-strictness is to be found in the older writers on this law, with regard to evidence, it chiefly related to the mere competency of witnesses; yet even here the rigour of the Roman lawyers relaxed on the necessity of the case. Persons who kept houses of ill fame were with them incompetent witnesses; yet among the maxims of that law, the rule is well known of "*Testes Lupanarum in re Lupanari*."

In ordinary cases, they require two witnesses to prove a fact; and therefore they held, "that if there be but one witness, and no probable grounds of presumption of some kind (*nulla argumenta*) that one witness is by no means to be heard;" and it is not inelegantly said in that case, "the failure is not in the law but in the proof." *Non jus deficit sed probatio*. But if other grounds of presumption appear, one witness is to be heard; "for it is not necessary that one crime should be established by one sort of proof only, as by witnesses, or by documents, or by presumptions; all the modes of evidence may be so conjoined, that where none of them alone would affect the prisoner, all the various concurrent proofs shall overpower him, like a storm, or a hail."

This is held particularly true, in cases where crimes are secret, and detection difficult.

The necessity of detecting and punishing such crimes superseded, in the soundest authors, this theoretic aim at perfection, and obliged technical science to submit to practical expedience. "*In re criminali*," said the rigorists, "*Probationes debent esse evidentes et Luce meridiana clarescunt*;" and so undoubtedly it is in offences which admit such proof. But reflection taught them, that even their favourite rules of incompetence must give way to the exigencies of distributive justice.

* Digest, l. xxli. tit. 5.

† Calvinus Voce "Præsumptio,"

‡ Bartolus.

One of the best modern writers on the Imperial criminal law, particularly as practised in Saxony (Carpovius) says, "This alone I think it proper to remark, that even incompetent witnesses are sometimes admitted, if otherwise the truth cannot be got at; and this particularly in facts and crimes which are of difficult proof;"—and for this doctrine, he cites Farinacius, Mascardus, and other eminent civilians who had written on evidence.—He proceeds afterwards, "however, this is to be taken with a caution, that the impossibility of otherwise discovering the truth, is not construed from hence, that other witnesses were not actually concerned, but that from the nature of the crime, or from regard had to the place and time, other witnesses could not be present."

Many other passages from the same authority, and from others to a similar effect, might be added: We shall only remark shortly that Gaill, a writer on the practice of that law the most frequently cited in our own courts, gives the rule more in the form of a maxim; "That the law is contented with such proof as can be made, if the subject in its nature is difficult of proof *." And the same writer, in another passage, refers to another still more general maxim (and a sound maxim it is) that the power and means of proof ought not to be narrowed but enlarged, that the truth may not be concealed.—*Probationum facultas non angustiari, sed ampliari debeat, ne veritas occultetur*†.

On the whole, your Committee can find nothing in the writings of the learned in this law, any more than they could discover any thing in the law of Parliament, to support any one of the determinations given by the Judges, and adopted by the Lords, against the evidence which your Committee offered, whether direct and positive, or merely (as for the greater part it was) circumstantial, and produced as a ground to form legitimate presumption against the defendant: nor, if they were to admit (which they do not) this Civil Law to be of authority in furnishing any rule in an impeachment of the Commons, more than as it may occasionally furnish a principle of reason on a new or undetermined point, do they find any rule or any principle, derived from that law, which could or ought to have made us keep back the evidence which we offered. On the contrary, we rather think these

rules and principles to be in agreement with our conduct.

As to the Canon Law, your Committee, finding it to have adopted the Civil Law with no very essential variation, does not feel it necessary to make any particular statement on that subject.

Your Committee then came to examine into the authorities in the English law, both as it has prevailed for many years back, and as it has been recently received in our courts below. They found on the whole the rules rather less strict, more liberal, and less loaded with positive limitations, than in the Roman law. The origin of this latitude may perhaps be sought in this circumstance, which we know to have relaxed the rigour of the Roman law—Courts in England do not judge upon evidence *secundum allegata et probata*, as in other countries, and under other laws they do, but upon verdict. By a fiction of law, they consider the jury as supplying in some sense the place of testimony.—One witness (and for that reason) is allowed sufficient to convict, in cases of felony, which in other laws is not permitted.

In ancient times it has happened to the law of England (as in pleading, so in matter of evidence), that a rigid strictness in the application of technical rules, has been more observed than at present it is. In the more early ages, as the minds of the Judges were in general less conversant in the affairs of the world, as the sphere of their jurisdiction was less extensive, as the matters which came before them were of less variety and complexity, the rule being in general right, not so much inconvenience on the whole was found from a literal adherence to it, than from an endeavour towards a liberal and equitable departure, for which further experience, and a more continued cultivation of equity as a science, had not then so fully prepared them.—In those times, that judicial policy was not to be condemned. We find too that, probably from the same cause, most of their doctrine leaned towards the restriction; and the old lawyers being bred, according to the then philosophy of the schools, in habits of great subtilty and refinement of distinction, and having once taken that bent, very great acuteness of mind was displayed in maintaining every rule, every maxim, every presumption of law creation, and every fiction of law, with a punctilious exactness; and this seems to have been the

Lib. II. Obs. 149. § 9.

[D 2]

† Lib. I. Obs. 91. § 7.

course which laws have taken in every nation*.

It was probably from this rigour, and from a sense of its pressure, that at an early period of our law, far more causes of criminal jurisdiction were carried into the House of Lords, and the Council Board, where laymen were Judges, than can or ought to be at present.

As the business of Courts of Equity became more enlarged, and more methodical, as magistrates, for a long series of years, presided in the Court of Chancery, who were not bred to the common law; as commerce, with its advantages and its necessities, opened a communication more largely with other countries; as the law of nature and nations (always a part of the law of England) came to be cultivated; as an encroaching empire; as new views and new combinations of things were opened, this antique rigour and overdone severity gave way to the accommodation of human concerns, for which rules were made, and not human concerns to bend to them.

At length, Lord Hardwicke† in one of the cases the most solemnly argued that has been in man's memory, with the aid of the greatest learning at the bar, and with the aid of all the learning on the Bench, both Bench and Bar being then supplied with men of the first form, declared from the Bench, and in concurrence with the rest of the Judges, and with the most learned of the long robe, the able Counsel on the side of the old restrictive principles making no reclamation—

"That the Judges and sages of the law have laid it down, that there is but ONE general rule of evidence—the best that the nature of the case will admit."

This, then, the master rule, that governs all the subordinate rules, does in reality subject itself and its own virtue and authority to the nature of the case; and leaves no rule at all of an independent, abstract, and substantive quality.

Sir Dudley Ryder (then Attorney-General, afterwards Chief Justice) in his learned argument, observed that—

"It is extremely proper, that there should be some general rules in relation to evidence; but, if exceptions were not

"allowed to them, it would be better to demolish all the general rules."

"There is no general rule without exception that we know of, but this, that the best evidence shall be admitted, which the nature of the case will afford."

"I will shew, that rules, as general as this, are broke in upon, for the sake of allowing evidence."

"There is no rule that seems more binding, than that a man shall not be admitted an evidence in his own case, and yet the statute of Hue and Cry is an exception."

"A man's books are allowed to be evidence, or, which is in substance the same, his servant's books, because the nature of the case requires it; as in the case of a brewer's servants."

"Another general rule, that a wife cannot be witness against her husband, has been broke in upon in cases of treason."

"Another exception to the general rule, that a man may not be examined without oath: the last words of a dying man are given in evidence, in the case of murder."—Such are the doctrines of this great lawyer.

Chief Justice Willes concurs with Lord Hardwicke as to dispensing with strict rules of evidence.—"Such evidence is to be admitted as the necessity of the case will allow of; as, for instance, a marriage at Utrecht, certified under the seal of the minister there, and of the said town, and that they cohabited together as man and wife, was held to be sufficient proof that they were married."

This learned Judge (commenting upon Lord Coke's doctrine, and Serjeant Hawkins's after him, that the oaths of Jews and Pagans were not to be taken) says, "that this notion, though advanced by so great a man, is contrary to religion, common sense and common humanity; and I think the devils, to whom he has delivered them, could not have suggested any thing worse."

Chief Justice Willes, admitting Lord Coke to be a great lawyer, then proceeds in very strong terms, and with marks of contempt, to condemn "his narrow notions;" and he treats with as little

* Antiqua jurisprudentia aspera quidem illa, tenebrosa, et tristis, non tam in sequitare, quam in verborum superstitione fundata, eaque Ciceronis ætatem fere attingit, mansitque annos circiter 350. Quæ hanc excepit, viginti annos fere 79, superiori lingue humanior; quippe quæ magis utilitate communi, quam potestate verborum, negotia moderaretur. Gravina, p. 86.

† Onichuud v. Baker, Atk. 1.

respect or decorum the ancient authorities referred to in defence of such notions:

The principle of the departure from those rules is clearly fixed by Lord *Hardwicke*; he lays it down as follows:—

"The first ground Judges have gone upon in departing from strict rules, is *absolute strict necessity*, adly, *A presumed necessity*." Of the first he gives these instances; "in the case of writings subscribed by witnesses, if all are dead, the proof of one of their hands is sufficient to establish the deed. Where an original is lost, a *copy* may be admitted; if no *copy*, then a proof by witnesses who have heard the deed; and yet it is a thing the law abhors, to admit the memory of man for evidence."

This enlargement through two stages of proof, both of them contrary to the rule of law, and both abhorrent from its principles, are by this great Judge accumulated upon one another, and are admitted, from necessity, to accommodate human affairs, and to prevent that, which Courts are by every possible means instituted to prevent—**A FAILURE OF JUSTICE.**

And this necessity is not confined within the strict limits of physical causes, but is more lax, and takes in moral, and even *presumed and argumentative necessity*, a necessity which is in fact nothing more than a great degree of expediency. The law creates a fictitious necessity against the rules of evidence in favour of the convenience of trade: an exception, which on a similar principle had before been admitted in the Civil Law, as to mercantile causes, in which the books of the party were received to give full effect to an insufficient degree of proof, called in the nicety of their distinctions a *semiplena probatio**.

But to proceed with Lord *Hardwicke*;—he observes, that "a tradesman's books (that is the acts of the party interested himself) are admitted as evidence, though no *absolute necessity*, but by reason of a *presumption* of necessity only inferred from the nature of commerce.

"No rule," continued Lord *Hardwicke*, "can be more settled, than that testimony is not to be received but upon oath;" but he lays it down, that an oath itself may be dispensed with.—"There is another instance," says he, "where the lawful oath may be dispensed

"with, where our Courts admit evidence for the Crown without oath."

In the same discussion, the Chief Baron (*Parker*) cited cases, in which all the rules of evidence had given way. "There is not a more general rule," says he, "than that hearsay cannot be admitted, nor husband and wife as witnesses against each other; and yet it is notorious that from necessity they have been allowed, not an *absolute necessity*, but a moral one."

It is further remarkable, in this judicial argument, that exceptions are allowed not only to rules of evidence, but that the rules of evidence themselves are not altogether the same, where the subject matter varies. The Judges have, to facilitate justice, and to favour commerce, even adopted the rules of foreign laws.—They have taken for granted, and would not suffer to be questioned, the regularity and justice of the proceedings of foreign Courts, and they have admitted them as evidence, not only of the fact of the decision, but of the right as to its legality—where there are foreign parties interested, and in "commercial matters, the rules of evidence are not quite the same as in other instances in Courts of Justice. The case of *Hue and Cry*, *Brownlow*, 47, a feme covert is not a lawful witness against her husband, except in cases of treason, but has been admitted in civil cases†. The testimony of a Public Notary, is evidence by the law of France; contracts are made before a Public Notary, and no other witness necessary. I should think it would be no doubt at all, if it came in question here, whether this would be a valid contract; but a testimony from persons of that credit and reputation would be received as a very good proof in foreign transactions, and would authenticate the contract."—Cro. Charl. 365.

These cases shew, that Courts always govern themselves by these rules in cases of foreign transactions. To this principle Lord *Hardwicke* accords; and enlarging the rule of evidence by the nature of the subject and the exigencies of the case, he lays it down, "that it is a common and natural presumption, that persons of the *Gentoo* religion should be principally apprized of facts and transactions in their own country. As the English have only a factory in this

* Gall. Lib. II. Obs. 20, sect. 5.

† N. B. In some criminal cases also, though not of treason, husband is admitted to prove an assault upon his wife, for the King, ruled by Raymond, Chief Justice, Trin. 11th Geo. King versus Azre. And for various other exceptions, see Buller's Nisi Prius, 286, 287.

"country, for it is in the empire of the Great Mogul, if we should admit this evidence [Gentoo evidence on a Gentoo oath], it would be agreeable to the genius of the Law of England." For this he cites the proceedings of our Court of Admiralty, and adopts the Author who states the precedent: "That this Court will give credit to the sentence of the Court of Admiralty in France, and take it to be according to right, and will not examine their proceedings; for it would be found *very inconvenient*, if one kingdom should, by *peculiar laws*, correct the judgments and proceedings of another kingdom."

Such is the *genius of the Law of England*, that these two principles of the general moral necessities of things, and the nature of the case, overrule every other principle, even those rules which seem the very strongest.

Chief Baron Parker, in answer to an objection made against the infidel Deponent, "That the plaintiff ought to have shewn that he could not have the evidence of Christians;" "I answer," said the Chief Baron, "that, *repugnant to natural justice*, in the statute of Hue and Cry, the robbed is admitted to be witness of the robbery, as a moral or *presumed necessity is sufficient*."

The same learned Magistrate, pursuing his argument in favour of liberality in opening and enlarging the avenues to justice, does not admit, "that the authority of one or two cases" is valid against reason, equity, and convenience, the vital principles of the Law. He cites *Wells versus Wilkians*, 1. Raymond, 282, to shew that the necessity of trade has mollified the too rigorous rules of the old Law, in their restraint and discouragement of aliens "A Jew may sue at this day, but *heretofore he could not*, for then they were looked upon as enemies, but now commerce has taught the world more humanity; and therefore held, that an alien enemy, commorant here by the licence of the King and under his protection, may maintain a debt upon a bond, though he did not come with safe conduct."

So far Parker, concurring with Raymond.—H. proceeds: "It was objected by the Defendant's Counsel, that this is a novelty, and that what never has been done ought not to be done." The answer is, "The Law of England is not confined to particular cases, but is much more governed by reason than by any one case whatever. The true rule is

"laid down by Lord Vaughan, fol. 37, 38. Where the Law, saith he, is known and clear, the Judges must determine as the Law is, without regard to the inequitableness or inconvenience. These defects, if they happen in the Law, can only be remedied by Parliament;—but where the Law is doubtful and not clear, the Judges ought to interpret the Law to be as is most consonant to equity and what is least inconvenient."

These principles of equity, convenience, and natural reason, Lord Chief Justice Lee considered in the same ruling light, not only as guides in matter of interpretation concerning Law in general, but, in particular, as controllers of the whole Law of Evidence, *which being artificial, and made for convenience, is to be governed by that convenience for which it is made*, and is to be wholly subservient to the stable principles of substantial justice. "I do apprehend," said that Chief Justice, "that the rules of evidence are to be considered as artificial rules framed by men for convenience in courts of justice. This is a case that ought to be looked upon in that light; and I take it, that considering evidence in this way [viz. according to natural justice], is agreeable to the genius of the Law of England."

The sentiments of Murray, then Solicitor General, afterwards Lord Mansfield, are of no small weight in themselves, and they are authority by being judicially adopted. His ideas go to the growing melioration of the Law, by making its liberality keep pace with the demands of justice and the actual concerns of the world; not restricting the infinitely diversified occasions of men, and the rules of natural justice, within artificial circumscriptions, but conforming our jurisprudence to the growth of our commerce and of our empire. This enlargement of our concerns, in the year 1744 he appears almost to have foreseen, and he lived to behold it. "The arguments on the other side," said that great Light of the Law (that is, arguments against admitting the testimony in question from the novelty of the case), "prove nothing. Does it follow from thence, that no witnesses can be examined in a case that never specifically existed before? or that an action cannot be brought in a case that never happened before? Reason (being stated to be the first ground of all laws, by the author of the book called Doctor and Student) must determine the case. Therefore the only question is, whether, upon

" upon principles of reason, justice, and convenience, this witness be admissible ?

" Cases in law depend upon the occasions which gave rise to them. All occasions do not arise at once : Now a particular species of Indians appears ; hereafter another species of Indians may arise. A statute can seldom take in all cases.—Therefore the common law, that works itself pure by rules drawn from the fountain of justice, is for this reason superior to an Act of Parliament *."

From the period of this great judgment to the Trial of Warren Hastings, Esquire, the law has gone on continually working itself pure (to use Lord Mansfield's expression) by rules drawn from the fountain of justice. "General rules," said the same person when he sat upon the bench, "are wisely established for attaining justice with ease, certainty, and dispatch. But the great end of them being to do justice, the Court will see that it be really obtained. The Courts have been more liberal of late years in their determination, and have more endeavoured to attend to the real justice of the case than formerly †."

On another occasion, on a proposition for setting aside a verdict, he said, "This seems to be the true way to come at justice, and what we therefore ought to do ; for the true text is *Boni judicis est ampliare justitiam* (not *jurisdictionem*, as has been often cited). In conformity to this principle, the supposed rules of evidence have, in late times and judgments, instead of being drawn to a greater degree of strictness, been greatly relaxed ‡."

"All evidence is according to the subject matter to which it is applied.—There is a great deal of difference between length of time, that operates as a bar to a claim, and that which is used only by way of evidence. Length of time, used merely by way of evidence, may be left to the consideration of the Jury, to be credited or not, or to draw their inferences one way or the other, according to circumstances.—I do not know an instance in which proof may not be supplied §."

In all cases of evidence Lord Mansfield's maxim, was to lean to admissibility, leav-

ing the objections, which were made to competency, to go to credit, and to be weighed in the mind of the jury, after they had heard it.—In objections to wills, and to the testimony of witnesses to them, he thought "it clear that the Judges ought to lean against objections to the formality §."

Lord Hardwicke had before declared, with great truth, "That the boundaries of what goes to the credit, and what to the competency, are very nice, and the latter parried too far ;" and in the same case he said, "that unless the objection appeared to him to carry a strong danger of perjury, and some apparent advantage might accrue to the witness, he was always inclined to let it go to his credit, only in order to let in a proper light to the case, which would otherwise be shut out ; and in a doubtful case, he said, it was generally his custom to admit the evidence, and give such directions to the jury as the nature of the case might require ¶."

It is a known rule of evidence, that an interest in the matter to be supported by testimony, disqualifies a witness ; yet Lord Mansfield held, "That *nic* objections to a remote interest, which could not be paid or released (though they held in other cases) were not allowed to disqualify a witness to a will, as parishioners might have a devise to the use of the poor of the parish for ever." He went still nearer, and his doctrine tends to fully to settle the principles of departure from, or adherence to, rules of evidence, that your Committee infer part of the argument at large.

"The disability of a witness from interest, is very different from a positive incapacity. If a deed must be acknowledged before a Judge or Notary Public, every other person is under a positive incapacity to authenticate it ; but objections of interest are deductions from natural reason, and proceed upon a presumption of too great a bias in the mind of the witness and the public utility of rejecting partial testimony**."

"Presumptions stand no longer than till the contrary is proved."

"The presumption of bias may be

* Omichund v. Barker, 1st Atkyns, ut supra.

† Burrow, Vol. I. p. 301. Rex v. Philips, p. 302, 304, 306.

‡ Wyndham v. Chetwynd, 1st Burrow, 414.

§ Cowper's Reports, 109. Mayor of Hull v. Horner.

¶ Abrahams v. Bunn, p. 2254. The whole case well worth reading.

¶ King v. Bray.

** Wyndham v. Chetwynd.

"taken off, by shewing the witness has a great or a greater interest the other way, or that he has given it up."

"The presumption of public utility may be answered, by shewing that it would be very inconvenient, under the particular circumstances, not to receive such testimony."

"Therefore, from the course of business, necessity and other reasons of expediency, numberless exceptions are allowed to the general rule."

There being the principles of the latter jurisprudence, the Judges have suffered no positive rule of evidence to counteract those principles. They have even suffered subscribing witnesses to a will, which recites the soundness of mind in the testator, to be examined to prove his insanity, and then the Court received evidence to overturn that testimony, and to destroy the credit of those witnesses. They were five in number, who attested to a will and codicil. They were admitted to annul the will they had themselves attested. Objections were taken to the competency of one of the witnesses in support of the will against its subscribing witnesses. 1st, That the witness was an executor in trust, and so liable to actions. 2dly, As having acted under the trust; whereby, if the will were set aside, he would be liable to answer for damages incurred by the sale of the deceased's chambers to a Mr. Frederick. Mr. Frederick offered to submit to a rule to release for the sake of public justice. Those who maintained the objection cited Siderfin, a reporter of much authority, 51. 115. and 1st Keble 134. Lord Mansfield, Chief Justice, did not controvert those authorities; but in the course of obtaining substantial justice, he treated both of them with equal contempt, though determined by Judges of high reputation. His words are remarkable: "We do not now sit here to take our rules of evidence from Siderfin and Keble." He over-ruled the objection upon more recent authorities, which, though not in similar circumstances, he considered as within the reason. The Court did not think it necessary that the witness should release, as he had offered to do.

"It appeared on this Trial" (says Justice Blackstone), "that a black conspiracy was formed to set aside the General's will, without any foundation whatever." A prosecution against three of the testamentary witnesses was recom-

mended, who were afterwards convicted of perjury. Had strict formalities with regard to Evidence been adhered to in any part of this proceeding, that very black conspiracy would have succeeded, and those black conspirators, instead of receiving the punishment of their crimes, would have enjoyed the reward of their perjury.

Lord Mansfield, it seems, had been misled in a certain case with regard to precedents †. His opinion was against the reason and equity of the supposed practice, but he supposed himself not at liberty to give way to his own wishes and opinions. On discovering his error, he considered himself as freed from an intolerable burthen, and hastened to undo his former determination. "There are no precedents," said he, with some exultation, "which stand in the way of our determining liberally, equitably, and according to the true intention of the parties." In the same case, his learned assessor, Justice Wilmut, felt the same sentiments. His expressions are remarkable: "Courts of Law ought to concur with Courts of Equity in the execution of those powers which are very convenient to be inserted in settlements; and they ought not to listen to nice distinctions that favour of the schools, but to be guided by true good sense and manly reason. After the Statute of Uses it is much to be lamented, that the Courts of Common Law had not adopted all the rules and maxims of Courts of Equity. This would have prevented the absurdity of receiving costs in one Court and paying them in another."—Your Committee does not produce the doctrine of this particular case as directly applicable to their Charge, no more than several of the others here cited. We do not know on what precedents or principles the evidence proposed by us has been deemed inadmissible by the Judges; therefore against the grounds of this rejection we find it difficult directly to oppose any thing. These precedents and these doctrines are brought to shew the general tenor of the Courts, their growing liberality, and the general tendency of all their reasonings and all their determinations to set aside all such technical subtleties or formal rules which might stand in the way of the discovery of truth and the attainment of justice.—The cases are adduced for the principles they contain,

* *Lowe v. Jones*, 1 Black. J. p. 366.

† *Luttrell v. Luttrell*, 1147. *22uch ex Dmiff*. *Woolsten v. Woolsten*.

The period of the cases and arguments we have cited, was that in which large and liberal principles of evidence were more declared, and more regularly brought into system. But they had been gradually improving; and there are few principles of the later decisions which are not to be found in determinations on cases prior to the time we refer to. Not to overdo this matter, and yet to bring it with some degree of clearness before the House, your Committee will refer but to a few authorities, and those which seem most immediately to relate to the nature of the case entrusted to them. In Michaelmas, 11. W. III. the King v. the Warden of the Fleet: A witness, who had really been a prisoner, and voluntarily suffered to escape, was produced to prove the escape. To the witness it was objected, that he had given a bond to be a true prisoner, which he had forfeited by escaping: besides, he had been re-taken. His testimony was allowed; and by the Court, among other things, it was said, *In secret transactions*, if any of the parties concerned are not to be, for the necessity of the third, admitted as evidence, it will be impossible to detect the practice; as in cases of the Statute of Hue and Cry, the party robbed shall be a witness to charge the hundred; and in the case of Cooke v. Watts in the Exchequer, where one who had been prejudiced by the will was admitted an evidence to prove it forged*. So in the case of King v. Harris †, where a feme covert was admitted as a witness for fraudulently drawing her in, when sole, to give a warrant of attorney for confessing a judgment on an unlawful consideration, whereby execution was sued out against her husband; and Holt, Chief Justice, held, that a feme covert could not by law be a witness to convict one on an information; yet in Lord Audley's case, it being a rape on her person, she was received to give evidence against him; and the Court concurred with him, because it was the best evidence the nature of the thing would allow.

This decision of Holt refers to others more early, and all on the same principle; and it is not of this day that this one great principle of eminent public expedience, this moral necessity ‡, "that crimes should not escape with impunity," has in all

cases overborne all the common juridical rules of evidence: it has even prevailed over the first and most natural construction of acts of Parliament, and that in matters of so penal a nature as high treason. It is known, that statutes made, not to open and enlarge, but on fair grounds to strengthen proofs, require two witnesses in cases of high treason. So it was understood without dispute, and without distinction, until the argument of a case in the High Court of Justice during the Usurpation: it was the case of the Presbyterian Minister Love §, tried for high treason against the Commonwealth in an attempt to restore the King. In this Trial it was contended for and admitted, that one witness to one overt act, and one to another overt act of the same treason, ought to be deemed sufficient.

That precedent, though furnished in times from which precedents were cautiously drawn, was received as authority throughout the whole reign of Charles the Second. It was equally followed after the Revolution, and at this day it is undoubted Law. It is not so from the natural or technical rules of construction of the act of Parliament, but from the principles of juridical policy. All the Judges who have ruled it, all the Writers of credit who have written upon it, assign this reason, and this only, *that treasons being plotted in secrecy, could in few cases be otherwise brought to punishment.*

The same principle of policy has dictated a principle of relaxation with regard to severe rules of evidence, in all cases similar, though of a lower order in the scale of criminality. It is against fundamental maxims that an accomplice should be admitted as a witness; but accomplices are admitted from the policy of justice, otherwise confederacies of crime could not be dissolved.

There is no rule more solid than that a man shall not entitle himself to profit by his own testimony; but an informer, in case of highway robbery, may obtain forty pounds to his own profit by his own evidence. This is not in consequence of positive provision in the act of Parliament; it is a provision of policy, lest the purpose of the act should be defeated.

Now, if policy has dictated this very large construction of an act of Parliament concerning high treason; if the same po-

* In this single point Holt did not concur with the rest of the Judges.

† 1st Siderfin, p. 431.

‡ Interest Republicæ ut maleficia ne remaneant impunita.

§ Love's Trial, State Trials, Vol. ii. p. 144-171 to 173, and 177; and Foster's Crown Law, p. 235.

they has dictated exceptions to the clearest and broadest rules of evidence in other high criminal causes; and if all this latitude is taken concerning matters for the greater part within our insular bounds; your Committee could not, with safety to the larger and more remedial justice of the law of Parliament, admit any rules, or pretended rules, uncorrected and uncontrolled by circumstances, to prevail in a trial which regarded offences of a nature as difficult of detection, and committed far from the sphere of the ordinary practice of our Courts.

If anything of an over-formal strictness is introduced into the Trial of Warren Hastings, Esquire, it does not seem to be copied from the decisions of these tribunals. It is with great satisfaction your Committee has found, that the reproach of "disgraceful subtleties," inferior rules of evidence, which prevent the discovery of truth, of forms, and modes of proceeding, which stand in the way of that justice, the forwarding of which is the sole rational object of their invention, cannot fairly be imputed to the common law of England, or to the ordinary practice of the Courts below.

CIRCUMSTANTIAL EVIDENCE, &c.

The rules of evidence in civil and in criminal cases, in law and in equity, being only reason methodized, are certainly the same. Your Committee however finds, that the far greater part of the law of evidence to be found in our Books turns upon questions relative to civil concerns. Civil cases regard property: now, although property itself is not, yet almost every thing concerning property, and all its modifications, is of artificial contrivance. The rules concerning it become more positive, as connected with positive institution. The Legislature therefore always, the Justice frequently, may ordain certain methods, by which alone they will suffer such matters to be known and established; because their very essence, for the greater part, depends on the arbitrary conventions of men. Men act on them, with all the power of a creator over his creature. They make fictions of law and presumptions of law (*presumptiones juris et de jure*), according to their ideas of utility; and against those fictions and against presumptions so created, they do and may reject all evidence. However, even in these cases there is some restraint. Lord Mansfield has let in a liberal spirit

against the fictions of law themselves; and he declared, that he would do, what in one case he actually did, and most wisely—that he would admit evidence against a fiction of law, when the fiction militated against the policy on which it was made.

Thus it is with things which owe their existence to men; but where the subject is of a physical nature, or of a moral nature independent of their conventions, men have no other reasonable authority than to register and digest the results of experience and observation. Crimes are the actions of physical beings, with an evil intention abusing their physical powers against justice, and to the detriment of society. In this case fictions of law and artificial presumptions (*juris et de jure*) have little or no place. The presumptions which belong to criminal cases are those natural and popular presumptions which are only observations turned into maxims, like adages and apophthegms, and are admitted (when their grounds are established) in the place of proof where better is wanting, but are to be always overturned by counter proof.

These presumptions mostly go to the intention. In all criminal cases, the crime (except where the law itself implies malice) consists rather in the intention than the action. Now, the intention is proved but by two ways: either, 1st, by confession—this first case is rare, but simple—2dly, by circumstantial proof. This is difficult, and requires care and pains: the connection of the intention and the circumstances is plainly of such a nature as more to depend on the sagacity of the observer than on the excellence of any rule. The pains taken by the civilians on that subject have not been very fruitful; and the English Law Writers have, perhaps, as wisely, in a manner abandoned the pursuit.

In truth, it seems a wild attempt to lay down any rule for the proof of intention by circumstantial evidence; all the acts of the party; all things that explain or throw light on these acts; all the acts of others relative to the affair, that come to his knowledge, and may influence him; his friendships and enmities, his promises, his threats, the truth of his discourses, the falsehood of his apologies, pretences, and explanations, his looks, his speech; his silence where he was called to speak; every thing which tends to establish the connection between all these particulars;

—every circumstance, precedent, concomitant, and subsequent, become parts of circumstantial evidence. These are in their nature infinite, and cannot be comprehended within any rule, or brought under any classification.

Now, as the force of that presumptive and conjectural proof rarely if ever depends upon one fact only, but is collected from the number and accumulation of circumstances concurrent in one point, we do not find an instance, until this Trial of Warren Hastings, Esquire (which has produced many novelties), that attempts have been made by any Court to call on the Prosecutor for an account of the purpose for which he means to produce each particle of this circumstantial evidence, to take up the circumstances one by one, to prejudge the efficacy of each matter separately in proving the point; and thus to break to pieces and to garble those facts, upon the multitude of which, their combination, and the relation of all their component parts to each other and to the culprit, the whole force and virtue of this evidence depends. To do any thing which can destroy this collective effect, is to deny circumstantial evidence.

Your Committee too cannot but express their surprise at the particular period of the present Trial when the attempts to which we have alluded first began to be made. The two first great branches of the accusation of this House against Warren Hastings, Esquire, relate to public and notorious acts, capable of direct proofs, such as the expulsion of Chetty Sing, with its consequences on the province of Benares, and the seizure of the treasures and jaghires of the Begums of Oude. Yet in the proof of those crimes your Committee cannot justly complain, that we were very narrowly circumscribed in the production of much circumstantial as well as positive evidence. We did not find any serious resistance on this head, till we came to make good our Charges of secret crimes; crimes of a class and description, in the proof of which all Judges of all countries have found it necessary to relax almost all their rules of competency; such crimes as peculation, pecuniary frauds, extortion, and bribery. Eight out of nine of the questions put to the Judges by the Lords, in the first stage of the Prosecution, related to circumstances offered in proof of these secret crimes.

Much industry and art have been used, among the illiterate and inexperienced, to

throw imputations on this Prosecution and its conduct, because so great a proportion of the evidence offered on this Trial (especially on the latter Charges) has been circumstantial. Against the prejudices of the ignorant your Committee opposes the judgment of the learned. It is known to them, that when this proof is in its greatest perfection, that is, when it is most abundant in circumstances, it is much superior to positive proof; and for this we have the authority of the learned Judge who presided at the Trial of Captain Donellan:—

“ On the part of the Prosecution, a great deal of evidence has been laid before you. It is *all* circumstantial evidence, and in its nature it must be so; for, in cases of this sort, no man is weak enough to commit the act in the presence of other persons, or to suffer them to see what he does at the time; and therefore it can only be made out by circumstances, either before the committing of the act, at the time when it was committed, or subsequent to it; and a presumption, which necessarily arises from circumstances, is very often more convincing and more satisfactory than any other kind of evidence, because it is not within the reach and compass of human abilities to invent a train of circumstances which shall be so connected together as to amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all, of these circumstances. But if the circumstances are such as, when laid together, bring conviction to your minds, it is then fully equal, if not, as I told you before, *more* convincing than positive evidence.”

In the Trial of Donellan no such selection was used as we have lately experienced; no limitation to the production of every matter before, at, and after the fact charged.

The Trial was (as we conceive) conducted by the learned Judge; secret crimes, such as secret assassination, poisoning, bribery, peculation, and extortion (the three last of which this House has charged upon Mr. Hastings), can very rarely be proved in any other way. That way of proof is made to give satisfaction to a searching, equitable, and intelligent mind; and there must not be a failure of justice. Lord Mansfield has said, that he did not know a case in which proof might not be supplied.

Your Committee has resorted to the Trial of Donellan; and they have, and do, chiefly upon it. First, on account of the known learning and ability of the Judge who tried the cause, and the particular attention he has paid to the subject of evidence, which forms a Book in his Treatise on *Misf Prius*. Next, Because, as the Trial went wholly on circumstantial evidence, the proceedings in it furnish some of the most complete and the fullest examples on that subject. Thirdly, Because the case is recent; and the Law cannot be supposed to be materially altered since the time of that event.

Comparing the proceedings on that Trial, and the doctrines from the Bench, with the doctrines we have heard from the Woolfack, your Committee cannot comprehend how they can be reconciled.

For the Lords compelled the Managers to declare for what purpose they produced each separate member of their circumstantial evidence; a thing, as we conceive, not usual, and particularly not observed in the Trial of Donellan. We have observed in that Trial, and in most others which we have had occasion to resort to, that the Prosecutor is suffered to proceed narratively and historically without interruption. If indeed it appears on the face of the narration, that what is represented to have been said, written, or done, did not come to the knowledge of the Prisoner, a question sometimes, but rarely, has been asked, Whether the Prisoner could be affected with the knowledge of it? When a connection with the Person of the Prisoner has been in any way shewn, or even promised to be shewn, the evidence is allowed to go on without further opposition. The sending of a sealed letter, the receipt of a sealed letter inferred from the delivery to the Prisoner's servant, the bare possession of a paper written by any other person, on the presumption that the contents of such letters or such paper were known to the Prisoner; and the being present when any thing was said or done, on the presumption of his seeing or hearing what passed; have been respectively ruled to be sufficient. If, on the other hand, no circumstance of connection has been proved, the Judge, in summing up, has directed the jury to pay no regard to a story or conversation the proof of which

has so failed;—a course much less liable to inconvenience where the same persons decide both the law and the fact*.

To illustrate the difficulties to which your Committee was subjected on this head, we think it sufficient to submit to the House (reserving a more full discussion on this important point to another occasion) the following short statement of an incident which occurred in this Trial:

By an express order of the Court of Directors (to which by the express words of the act of Parliament under which he held his office he was ordered to yield obedience) Mr. Hastings and his Colleagues were directed to make an enquiry into all offences of bribery and corruption in office. On the 11th of March a charge in writing of bribery and corruption in office was brought against himself. On the 13th of the same month, the Accuser, a man of high rank, the Rajah Nundcomar, appears personally before the Council, to make good his charge against Mr. Hastings before his own face. Mr. Hastings thereon fell into a very intemperate heat, obstinately refused to be present at the examination, attempted to dissolve the Council, and contumaciously retired from it. Three of the other Members, a majority of the Council, in execution of their duty, and in obedience to the orders received under the act of Parliament, proceeded to take the evidence, which is very minute and particular, and was entered in the records of the Council by the regular official Secretary. It was afterwards read in Mr Hastings's own presence, and by him transcribed, under his own signature, to the Court of Directors. A separate letter was also written by him, about the same time, desiring, on his part, that in any enquiry into his conduct "not a single word should escape observation."

This proceeding in the Council your Committee, in its natural order, and in a narrative chain of circumstantial proof, offered in evidence. It was not permitted to be read; and on the 20th and 21st of May, 1789, we were told from the Woolfack, that when a Paper is not evidence "by itself" (such this part of the Consultation, it seems, was reputed), "a party who wishes to introduce a Paper of that kind, is called upon not only

* *Cherry's Case*, Leach, p. 128. *Gordon's Case*, *ibid.* p. 245. *Lord Preston's Case*, St. Tr. iv. p. 439. *Laver's Case*, St. Tr. vi. p. 279. *Foster's Crown Law*, p. 198. *Canning's Trial*, St. Tr. x. p. 263. 270. *Trial of the Duchess of Kingston*, St. Tr. xi. p. 244. *Trial of Huggins*, St. Tr. ix. p. 119, 120, 135.

"to state, but to make out on proof, the whole of the grounds upon which he proceeds to make that Paper proper evidence.—That the evidence that is produced must be the demeanour of the party respecting that paper; and it is the connection between them, as material to the charge depending, that will enable them to be produced."

Your Committee observes, that this was not a paper foreign to the prisoner, and sent to him as a letter, the receipt of which, and his conduct thereon, were to be brought home to him, to infer his guilt from his demeanour. It was an office document of his own department, concerning himself, and kept by officers of his own, and by himself transmitted, as we have said, to the Court of Directors. Its proof was in the record. The charge made against him, and his demeanour on being acquainted with it, were not in separate evidence. They all lay together, and composed a connected narrative of the business, authenticated by himself.

In that case it seems to your Committee extremely irregular and preposterous to demand previous and extraneous proofs of the demeanour of the party respecting the paper, and the connection between them, as material to the charge depending; for this would be to try what the effect and operation of the evidence would be on the issue of the cause, before its production.

The doctrine so laid down demands that every several circumstance should in itself be conclusive, or at least should afford a violent presumption; it must we were told, without question, be material to the charge depending. But, as we conceive, its materiality, more or less, is not in the first instance to be established. To make it admissible, it is enough to give proof, or to raise a legal inference of its connection both with the charge depending, and the person of the party charged, where it does not appear on the face of the evidence offered. Besides, by this new doctrine, the materiality required to be shewn must be decided from a consideration not of the whole circumstance, but in truth of one half of the circumstance of a demeanour, unconnected with, and unexplained by that on which it arose, though the connection between the demeanour of the party and the paper is that which must be shewn. Your Committee, after all they have heard, is yet to learn how the full force and effect of any demeanour, as evidence of guilt or innocence, can be known, unless it be also fully known to what that demeanour applied; unless when a person did or said

any thing, it be known, not generally and abstractedly, that a paper was read to him, but particularly and specifically what were the contents of that paper. Whether they were matters lightly or weightily alleged, within the power of the party accused, to have confuted on the spot, if false; or such as, though he might have denied, he could not instantly have disproved. The doctrine appeared, and still appears, to your Committee to be totally abhorrent from the genius of circumstantial evidence, and mischievously subversive of its use. We did, however, offer that extraneous proof which was demanded of us, but it was refused, as well as the office document.

Your Committee thought themselves the more bound to contend for every mode of evidence to the intention; because in many of the cases the gross fact was admitted, and the Prisoner and his Counsel set up pretences of public necessity and public service for his justification. No way lay open for rebutting this justification, but by bringing out all the circumstances attendant on the transaction.

ORDER AND TIME OF PRODUCING EVIDENCE.

Your Committee found great impediment in the production of evidence, not only on account of the general doctrines supposed to exist concerning its inadmissibility drawn from its own alleged natural incompetency, or from its inapplicability under the pleading of the Impeachment of this House; but also from the mode of proceeding in bringing it forward. Here evidence which we thought necessary to the elucidation of the cause was not suffered, upon the supposed rules of examination in chief, and cross examination—and on supposed rules, forming a distinction between evidence originally produced on the charge, and evidence offered on the reply.

On all these, your Committee observes in general, that if the rules which respect the substance of the evidence are (as the great lawyers on whose authority we stand assert they are) no more than rules of convenience, much more are those subordinate rules which regard the order, the manner, and the time of the arrangement. These are purely arbitrary; without the least reference to any fixed principle in the nature of things, or to any settled maxim of jurisprudence, and consequently are variable at every instant, as the conveniences of the cause may require.

We admit that in the order of mere examination, there is a difference between examination of witnesses in chief, and cross examination, and that in general these several parts are properly cast, according to the situation of the parties in the cause; but there neither is nor can be any precise rule to discriminate the exact bounds between examination and cross examination. So as to time, there is necessarily some limit, but a limit hard to fix: The only one which can be fixed with any tolerable degree of precision, is, when the Judge, after fully hearing all parties, is to consider of his verdict or his sentence. Whilst the cause continues under hearing in any shape, or in any stage of the process, it is the duty of the Judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves, through negligence, ignorance, or corrupt collusion, should not bring it forward. A Judge is not placed in that high situation merely as a passive instrument of parties: He has a duty of his own, independent of them, and that duty is to investigate the truth. There may be no prosecutor.—In our law a permanent prosecutor is not of necessity. The Crown Prosecutor in criminal cases is a Grand Jury; and this is dissolved instantly on its findings and its prelements. But if no prosecutor appears (and it has happened more than once) the Clerk of the Arraigns, to examine and cross-examine every witness who presents himself; and the Judge is to see it done effectually, and to act his own part in it; and it is as long as evidence shall be offered within the time which the mode of trial will admit.

Your Committee is of opinion, that if it has happened, that witnesses or other kinds of evidence have not been frequently produced after the closing of the prisoner's defence, or such evidence has not been in reply given, it has happened from the peculiar nature of our common judicial proceedings, in which all the matter of evidence must be presented, whilst the bodily force and the memory, or other mental faculties of men, can hold out. This does not exceed the compass of one natural day, or thereabouts; during that short space of time, new evidence very rarely occurs for production by any of the parties; because the nature of men, joined to the nature of the tribunals, and of the mode of trial at

Common Law (good and useful on the whole) prescribe limits which the mere principles of justice would of themselves never fix.

But in other Courts, such as the Court of Chancery, the Courts of Admiralty Jurisdiction (except in Prize Causes under the Act of Parliament) and in the Ecclesiastical Courts wherein the trial is not by an inclosed jury in those Courts, such strict limits are not of course necessary. The cause* is continued by many adjournments; as long as the trial lasts, new witnesses are examined, even after the regular stage for each party, on a special application, under the circumstances, to the sound discretion of the Court, where the evidence offered is newly come to the knowledge or power of the party, and appears on the face of it to be material in the cause.—*Even after Hearing*, new witnesses have been examined, or former witnesses re-examined, not as the right of the parties, but *ad informandum conscientiam judicis*. All these things are not unfrequent in some, if not in all these Courts, and perfectly known to the Judges of Westminster Hall, who cannot be supposed ignorant of the practice of the Court of Chancery; and who sit to try appeals from the Admiralty and Ecclesiastical Courts as Delegates.

But as criminal prosecutions according to the forms of the Civil and Canon Law are neither many nor important in any Court of this part of the kingdom, your Committee thinks it right to state the undisputed principle of the Imperial Law, from the great writer on this subject before cited by us; from Carpzovius. He says, "that a doubt has arisen whether evidence being once given in a trial on a public prosecution (*in processu inquisitorio*) and the witness being examined, it may be allowed to form other and new articles, and to produce new witnesses†."—Your Committee must here observe, that the *processus inquisitorius* is that proceeding in which the prosecution is carried on in the name of the Judge acting *ex officio*; from that duty of his office, which is called the *nobile officium judicis*. For the Judge under the Imperial Law possesses both those powers, the inquisitorial and the judicial, which in the High Court of Parliament are more aptly divided and exercised by the different Houses; and in this kind of process the House will see that

* *Harrison's Practice of Chancery*, Vol. II. p. 46. 1. Ch. Ca. 223. 1. Ch. Ca. 25.
 † *Carp. Pract. Saxo. Crimin. Part III. Quest. 114. No. 13.*

Carpzovius couples the production of new witnesses and the forming of new articles (the undoubted privilege of the Commons) as intimately and necessarily connected. He then proceeds to solve the doubt—“Certainly (says he) there are authors who deny, that, after publication of the depositions, any new witnesses and proofs, that can affect the prisoner, ought to be received, which (says he) is true in a case where a private prosecutor has intervened, who produces the witnesses. But if the Judge proceeds by way of inquisition *ex officio*, then, even after the completion of the examination of witnesses against the prisoner, new witnesses may be received and examined; and on new grounds of suspicion arising, new articles may be formed according to the common opinion of the Doctors; and as it is the most generally received, so it is most agreeable to reason.”

And in another chapter, relative to the ordinary criminal process by a private prosecutor, he lays it down, on the authority of Angelus, Bartolus, and others, that after the right of the party prosecuting is expired, the Judge taking up the matter *ex officio* may direct new witnesses and new proofs, even after publication*. Other passages from the same writer, and from others, might be added; but your Committee trusts that what they have produced is sufficient to shew the general principles of the Imperial Criminal Law.

The High Court of Parliament bears in its modes of proceeding a much greater resemblance to the course of the Court of Chancery, the Admiralty, and Ecclesiastical Courts (which are the King's Courts too, and their law the law of the land) than to those of the common law.

The accusation is brought into Parliament at this very day by *exhibiting articles*; which, your Committee is informed, is the regular mode of commencing a criminal prosecution, where the office of the Judge is promoted in the Civil and Canon Law Courts of this country. The answer again is usually specific, both to the fact and the law alledged in each particular article, which is agreeable to the proceedings of the Civil Law, and not of the Common Law.

Anciently the resemblance was much nearer and stronger. Selden, who was himself a great ornament of the Common Law, and who was personally engaged in most of the impeachments of his time, has

written expressly on the judicature in Parliament. In his fourth chapter, intituled, *Of Witnesses*, he lays down the practice of his time, as well as of ancient times, with respect to the proof by examination; and it is clearly a practice more similar to that of the Civil than the Common Law.

“The practice at this day (says he) is to swear the witnesses in open house, and then to examine them there, or at a Committee, either upon interrogatories agreed upon in the House, or such as the Committee in their discretion shall demand—thus it was in ancient times, as shall appear by the precedents, so many as they are, they being very sparing to record those ceremonies, which I shall briefly recite, I then add those of later times.”

Accordingly, in times so late as those of the trial of Lord Middlesex†, upon an Impeachment of the Commons, the whole course of the proceeding, especially in the mode of adducing the evidence, was in a manner the same as in the civil law; depositions were taken, and publication regularly passed; and on the trial of Lord Strafford, both modes pointed out by Selden seem to have been indifferently used.

It follows, therefore, that this High Court (bound by none of their rules) has a liberty to adopt the methods of any of the legal Courts of the kingdom at its discretion; and in sound discretion it ought to adopt those which bear the nearest resemblance to its own constitution, to its own procedure, and to its exigencies in the promotion of justice.

There are conveniencies and inconveniencies both in the shorter and the longer mode of trial. But to bring the methods observed (if such are in fact observed) in the former, only from necessity, into the latter, by choice, is to load it with the inconveniency of both, without the advantages of either. The chief benefit of any process which admits of adjournments, is that it may afford means of fuller information and more mature deliberation.—If neither of the parties have a strict right to it, yet the Court or the Jury, as the case may be, ought to demand it.

Your Committee is of opinion, that all rules relative to laches or neglects in a party to the suit, which may cause nonsuit on the one hand, or judgment by default in the other, all things which cause the party *cadere in jure*, ought not to be adhered to in the utmost rigour, even in civil cases;

* Carpz. Pract. Saxon. Crimid. Part III. Quest. 106. N.º 82.

† 22 Jac. I. 1624.

but still less ought that spirit, which takes advantage of lapses and failures on either side, to be suffered to govern in causes criminal. Judges ought to lean against every attempt to *non-suit* a plaintiff on objections which have no relation to the *res meriti*. It is unconscionable in a defendant to take advantage of the *apicis litigandi*—against such objections, every possible presumption ought to be made which ingenuity can suggest.—How disgraceful would it be to the administration of justice to allow *chicane* to obstruct right.* This observation of Lord Mansfield applies equally to every means by which, indirectly as well as directly, the cause may fail upon any other principles than those of its merits †. He thinks, that all the resources of ingenuity ought to be employed to baffle *chicane*, not to support it. The case in which Lord Mansfield has delivered this sentiment is merely a civil one. In civil causes of *meum & tuum*, it imports little to the commonwealth, whether Titus or Mævius profits of a legacy; or whether John a Nokes or John a Stiles is seized of the manor of Dale. For which reason, in many cases, the private interests of men are left by courts to suffer by their own neglects, and their own want of vigilance, as their fortunes are permitted to suffer from the same causes in all the concerns of common life. But in crimes, where the prosecution is on the part of the public (as all criminal prosecutions are, except appeals) the public prosecutor ought not to be considered as a plaintiff in a cause of *meum & tuum*; nor the prisoner in such a cause as a common defendant. In such a cause the State itself is highly concerned in the event: On the other hand, the prisoner may lose life, which all the wealth and power of all the States in the world cannot restore to him. Undoubtedly the State ought not to be weighed against justice; but it would be dreadful indeed if causes of such importance should be sacrificed to petty regulations, of more secondary convenience, not at all adapted to such concerns, nor even made with a view to their existence. Your Committee readily adopts the opinion of the learned *Ryder*, that it would be better if there were no such rules, than that there should be no exceptions to them. Lord Hardwicke declared very properly, in the case of the Earl of Chatterfield against Sir Abraham Janfon,

“That political arguments, in the fullest sense of the word, as they concerned the government of a nation, must be, and always have been of great weight in the consideration of this Court. Though there be no *dolus malus* in contracts with regard to other persons, yet if the rest of mankind are concerned as well as the parties, it may be properly said, it regards the public utility ‡.” Lord Hardwicke laid this down in a cause of *meum & tuum*, between party and party, where the public was concerned only remotely, and in the example; not as in this prosecution, when the political arguments are infinitely stronger, the crime relating, and in the most eminent degree relating, to the public.

One case has happened since the time which is limied by the order of the House for this Report: It is so very important, that we think ourselves justified in submitting it to the House without delay.—Your Committee, on the supposed rules here alluded to, has been prevented (as of right) from examining a witness of importance in the case, and one on whose supposed knowledge of his most hidden transactions, the prisoner had himself, in all stages of this business, as the House well knows, endeavoured to raise presumptions in favour of his cause. Indeed it was his principal if not only justification, as to the *intention*, in many different acts of corruption charged upon him.—The witness to whom we allude, is Mr. Larkin.

This Witness came from India after your Committee had closed the evidence of this House, in chief; and could not be produced before the time of the reply.—Your Committee was not suffered to examine him; not, as they could find, on objections to the particular question, as improper, but upon some or other of the general grounds (as they believe) on which Mr. Hastings resisted any evidence from him. The party, after having resisted his production, on the next sitting day admitted him; and by consent he was examined: Your Committee entered a protest on the minutes in favour of their right.

Your Committee contended; and do contend, that by the law of Parliament, whilst the Trial lasts, they have full right to call new evidence, as the circumstances may afford, and the posture of the cause

* *Morris v. Pugh and others. Burrow, p. 1243. See also Burrow, 4.*

† *Dickson v. Fisher. Alder v. Chip. Grey v. Smythies. Blackstone's Reports.*

‡ N. B. All from the same Judge, and proceeding on the same Principles.

§ *Aikyn's Reports, Vol. I. Chatterfield v. Janfon.*

may demand it. This right seems to have been asserted by the Managers for the Commons in the case of Lord Stafford—32. Ch. 2.*

The Managers, in that case, claimed it as the right of the Commons to produce witnesses for the purpose of fortifying their former evidence. Their claim was admitted by the Court. It is an adjudged case in the law of Parliament.

Your Committee is well aware, that the notorious perjury and infamy of the witnesses in the trial of Lord Stafford has been used to throw a shade of doubt and suspicion on all that was transacted on that occasion. But there is no force in such an objection. Your Committee has no concern in the defence of these witnesses; nor of the Lords who found their verdict on such testimony; nor of the morality of those who produced it. Much may be said to palliate errors on the part of the Prosecutors and Judges, from the heat of the times, arising from the great interests then agitated. But it is plain, there may be perjury in witnesses, or even conspiracy unjustly to prosecute, without the least doubt of the legality and regularity of the proceedings in any part. This is too obvious and too common to need argument or illustration.

The proceeding in Lord Stafford's case never has, now for an hundred and fourteen years, either in the warm controversies of parties, or in the cool disquisitions of lawyers and historians, ever been questioned. The perjury of the witnesses has been more doubted at some periods, than the regularity of the proceedings has been at any period.

The learned Lawyer who led for the Commons in that Impeachment (Seijeant Maynard) had, near forty years before, taken a forward part in the great cause of the Impeachment of Lord Strafforde; and was, perhaps, of all men then in England, the most conversant in the Law and Usage of Parliament. Jones was one of the ablest Lawyers of his age. His Colleagues were eminent men.

In the Trial of Lord Strafforde (which has attracted the attention of History more than any other, on account of the importance of the cause itself, the skill and learning of the Prosecutors, and the eminent abilities of the Prisoner), after the Prosecutors for the Commons had gone through their evidence on the Articles; after the Prisoner had also made his defence, either

upon each severally; or upon each body of Articles as they had been collected into one; and the Managers had in the same manner replied; when; previous to the general concluding reply of the Prosecutors, the time of the general summing up (or recollection, as it was called) of the whole evidence on the part of Lord Strafforde arrived, the Managers produced new evidence. Your Committee wishes to call the particular attention of the House to this case, as the contest between the parties did very nearly resemble the present; but, principally, because the sense of the Lords on the Law of Parliament, in its proceedings with regard to the reception of evidence, is there distinctly laid down: so is the report of the Judges relative to the Usage of the Courts below full of equity and reason, and in perfect conformity with the right for which we contended in favour of the Public, and in favour of the Court of Peers itself. The matter is as follows. Your Committee gives it at large:

"After this, the Lord Steward adjourn-
ed this House to Westminster Hall †;
and the Peers being all set there in their
places, the Lord Steward commanded
the Lieutenant of the Tower to bring
forth the Earl of Strafforde to the Bar;
which being done, the Lord Steward
signified that both sides might make a
recollection of their evidence, and the
Earl of Strafforde to begin first:
Hereupon Mr. Glynn desired, that
before the Earl of Strafforde began, that
the Commons might produce two wit-
nesses to the Fifteenth and Twenty-third
Articles, to prove that there be two men
whose names are Berne; and so a mis-
take will be made clear.

"The Earl of Strafforde desired, that
no new witnesses may be admitted against
him, unless he might be permitted to
produce witnesses on his part likewise;
which the Commons consented to, so
the Earl of Strafforde would confine
himself to those Articles upon which he
made reservations; but he not agreeing
to that, and the Commons insisting up-
on it;

"The House was adjourned to the usual
place above, to consider of it; and after
some debate, their Lordships thought it
fit, That the Members of the Commons
go on in producing new witnesses, as
they shall think fit, to the Fifteenth and
Twenty-third Articles; and that the

* State Trials, Vol. 3. p. 170.

† Lords' Journals, 17. Ch. 1. Die Sabbati, videlicet 20. Aprilis.

" Earl of Strafforde may presently produce such witnesses as are present ; and such as are not, to name them presently, and to proceed on Monday next ; and also, if the Commons and Earle of Strafforde will proceed upon any other articles, upon new matter, they are to name the witnesses and articles on both sides presently, and to proceed on Monday next ; but both sides may waive it if they will.

" The Lord Steward adjourned this House to Westminster Hall ; and, being returned thither, signified what the Lords had thought fit for the better proceeding in the business.

" The Earl of Strafforde, upon this, desiring not to be limited to any reservation, but to be at liberty for what articles are convenient for him to fortify with new witnesses ; to which the Commons not assenting, and for other scruples which did arise in the case, one of the Peers did desire that the House might be adjourned, to consider further of the particulars. Hereupon the Lord Steward adjourned the House to the usual place above.

" The Lords, being come up into the House, fell into debate of the business ; and, for the better informing of their judgments what was the course and common justice of the kingdom, propounded this question to the Judges :

" Whether it be according to the course of practice and common justice, before the Judges in their several Courts, for the Prosecutors in behalf of the King, *during the time of trial, to produce witnesses to discover the truth*, and whether the Prisoner may not do the like ?

" The Lord Chief Justice delivered this as the unanimous opinions of himself and all the rest of the Judges :

" That, according to the course of practice and common justice, before them in their several Courts, upon trial by jury, *as long as the prisoner is at the Bar, and the jury not sent away*, either side may give their evidence and examine witnesses to discover truth ; and this is all the opinion as we can give concerning the proceedings before us.

" Upon some consideration after this the House appointed the
" Earl of Bath,
" Earl of South'ron,

" Earl of Hartford,

" Earl of Essex,

" Earl of Bristol, and

" The Lord Viscount Say et Seale,

" To draw up some reasons upon which the former order was made ; which being read as follows, were approved of as the order of the House :

" The Gentlemen of the House of Commons did declare, that they challenge to themselves, by the common justice of the kingdom, that they, being prosecutors for the King, may bring any new proofs by witnesses during the time of the evidence being not fully concluded. The Lords, being Judges, and so equal to them and the Prisoner, conceived this their desire to be just and reasonable ; and also that, by the same common justice, the Prisoner may not be the same liberty ; and that, to avoid any occasions of delay, the Lords thought fit that the articles and witnesses be presently named, and such as may be presently produced to be used presently, and no further time to be given.

" The Lord Steward was to let them know, that if they will on both sides waive the use of new witnesses, they may proceed to the recollection of their evidence on both sides ; if both sides will not waive it, then the Lord Steward is to read the precedent order ; and if they will not proceed then, this House is to adjourn and rise."

By this it will appear to the House, how much this exclusion of evidence, brought for the discovery of truth, is unsupported either by Parliamentary precedent, or by the rule as understood in the Common-Law Courts below ; and your Committee (protesting however against being bound by any of the technical rules of inferior Courts) thought and think they had a right to see such a body of precedents and arguments for the rejection of evidence during trial, in some Court or other, before they were in this matter stopped and concluded.

Your Committee has not been able to examine every criminal trial in the voluminous collection of State Trials or elsewhere ; but having referred to the most laborious Compiler of Law and Equity, Mr. Viner, who has allotted a whole volume to the title of Evidence, we find but one ruled case in a trial at Common Law, before or since, where new evidence for the discovery of truth has been re-

jected as not being in due time. "*A privy verdict had been given in B. R. 14. Eliz. for the Defendant* ; but afterwards, before the Inquest gave their verdict openly, the Plaintiff prayed that he might give more evidence to the jury, *be having (as it seemed) discovered* that the jury had found against him ; but the Justices would not admit him to do so ; but after that Southcote, J. had been in C. B. to ask the opinion of the Justices there, they took the verdict *."

In this case the offer of new evidence was not during the trial. The trial was over. The verdict was actually delivered to the Judge. There was also an appearance, that the discovery of the actual finding had suggested to the Plaintiff the production of new evidence ; yet it appeared to the Judges so strong a measure to refuse evidence, whilst any, even formal, appearance remained that the trial was not closed, that they sent a Judge from the Bench into the Common Pleas to obtain the opinion of their Brethren there, before they could venture to take upon them to consider the time for production of evidence as elapsed. The case of refusal, taken with its circumstances, is full as strong an example in favour of the report of the Judges in Lord Stafford's case, as any precedent of admittance can be.

The researches of your Committee not having furnished them with any cases in which evidence has been rejected during the trial, as being out of time, we have found some instances in which it has been actually received ; and received, not to repel any new matter in the Prisoner's defence, but when the Prisoner had called all his witnesses, and thereby closed his defence. A remarkable instance occurred on the trial of Hamilton for the murder of Dr. Clenche. The Justices who tried the cause, (viz.) Lord Chief Justice Holt, and the Justices Atkins and Nevil, admitted the Prosecutor to call new evidence, for no other reason but that a new witness was then come into Court who had not been in Court before. These Justices apparently were of the same opinion on this point with the Justices who give their opinion in the case of Lord Strafforde †.

Your Committee on this point, as on the former, cannot discover any authority for the decision of the House of Lords in the Law of Parliament, or in the Law of Practice of any Court in this kingdom.

PRACTICE BELOW.

Your Committee not having learned that the resolutions of the Judges (by which the Lords have been guided) were supported by any authority in law to which they could have access, have heard by rumour, that they have been justified upon the practice of the Courts in ordinary trials by commission of oyer and terminer.

To give any legal precision to this term of *practice*, as thus applied, your Committee apprehends it must mean—that the Judge in whose criminal trials has so regularly rejected a certain kind of evidence when offered there, that it is to be regarded in the light of a case frequently determined by legal authority. If such had been discovered, though your Committee never could have allowed these precedents as rules for the guidance of the High Court of Parliament, yet they should not be surprised to see the inferior Judges forming their opinions on their own confined practice.

Your Committee, in their enquiry, has found comparatively few reports of criminal trials, except the collection under the title of State Trials, a book compiled from materials of very various authority ; and in none of those which we have seen is there, as appears to us, a single example of the rejection of evidence similar to that rejected by the advice of the Judges in the House of Lords. Neither, if such examples did exist, could your Committee allow them to apply directly and necessarily as a measure of reason to the proceedings of a Court constituted so very differently from those in which the common law is administered.

In the trials below, the Judges decide on the competency of the evidence before it goes to the jury, and (under the correctives in the use of their discretion stated before in this Report) with great propriety and wisdom. Juries are taken promiscuously from the mass of the people ; they are composed of men who, in many instances, in most perhaps, never were concerned in any causes, judicially or otherwise, before the time of their service. They have generally no previous preparation or possible knowledge of the matter to be tried, or what is applicable or inapplicable to them, and they decide in a space of time too short for any nice or critical disquisition. These Judges, therefore, of necessity must forestall the evidence where there is a doubt on its competence,

* Dal. 80. pl. 18. anno 24. Eliz. apud Viner, Evid. p. 60.

† State Trials, Vol. iv. p. 501.

and indeed observe much on its credibility, or the most dreadful consequences might follow. The institution of juries, if not thus qualified, could not exist. Lord *Mansfield* makes the same observation with regard to another corrective of the short mode of trial—that of a *new trial*.

This is the law, and this its policy. The jury are not to decide on the competency of witnesses, or of any other kind of evidence, in any way whatsoever. Nothing of that kind can come before them. But the Lords in the High Court of Parliament are not, either actually or virtually, a jury. No legal power is interposed between them and evidence; they are themselves by law fully and exclusively equal to it. They are persons of high rank, generally of the best education, and of sufficient knowledge of the world; and they are a permanent, a settled, a corporate, and not an occasional and transitory judicature. But it is to be feared, that the authority of the Judges (in the case of juries legal) may, from that example, weigh with the Lords further than its reason, or its applicability to the judicial capacity of the Peers, can support. It is to be feared, that if the Lords should think themselves bound implicitly to submit to this authority, that at length they may come to think themselves to be no better than jurors, and may virtually consent to a partition of that judicature which the law has left to them whole, supreme, uncontrouled, and final.

This final and independent judicature, because it is final and independent, ought to be very cautious with regard to the rejection of evidence. If incompetent evidence is received by them, there is nothing to hinder their judging upon it afterwards according to its value. It may have no weight in their judgment; but if, upon advice of others, they previously reject information necessary to their proper judgment, they have no intermediate means of setting themselves right, and they injure the cause of justice, without any remedy. Against errors of juries, there is remedy by a new trial. Against errors of Judges, there is remedy, in civil causes, by demurrer and bills of exceptions; against their final mistake, there is remedy by writ of error, in totius of common law. In chancery there is a remedy by appeal. If they wilfully err in the rejection of evidence, there was formerly the terror existing

of punishment by impeachment of the Commons; but with regard to the Lords, there is no remedy for error, no punishment for a wilful wrong.

Your Committee conceives it not improbable, that this apparently total and unreserved submission of the Lords to the dictates of the Judges of the inferior Courts (no proper judges in any light, or in any degree, of the Law of Parliament) may be owing to the very few causes of original jurisdiction, and the great multitude of those of appellate jurisdiction which come before them. In cases of appeal, or of error (which is in the nature of an appeal), the court of appeal is obliged to judge, not by its *own* rules, acting in another capacity, or by those which it shall choose *pro re nata* to make, but by the rules of the inferior court from whence the appeal comes; for the fault or the mistake of the inferior Judge is, that he has not proceeded as he ought to do, according to the law which he was to administer; and the correction, if such shall take place, is to compel the Court from whence the appeal comes, to act as originally it ought to have acted according to law, as the law ought to have been understood and practised in that tribunal.

The Lords, in such cases of necessity, judge on the grounds of the law and practice of the Courts below; and this they can very rarely learn with precision but from the body of the Judges: of course much deference is and ought to be had to their opinions. But by this means a confusion may arise (if not well guarded against) between what they do in their appellate jurisdiction, which is frequent, and what they ought to do in their original jurisdiction, which is rare; and by this the whole original jurisdiction of the Peers, and the whole law and usage of Parliament, at least in their virtue and spirit, may be considerably impaired.

After having thus submitted to the House the general tenor of the proceedings in this Trial, your Committee will, with all convenient speed, lay before the House the proceedings on each head of evidence separately, which has been rejected; and this they hope will put the House more perfectly in possession of the principal causes of the length of this Trial, as well as of the injury which Parliamentary justice may, in their opinion, suffer from those proceedings.

APPENDIX.

No. 2.

REASONS, &c. §

IN THE CASE OF EARL FERRERS.

APRIL 17th, 1760.*

THE House of Peers unanimously found Earl Ferrers guilty of the felony and murder whereof he stood indicted; and the Earl being brought to the bar, the High Steward acquainted him therewith; and the House immediately adjourned to the Chamber of Parliament, and, having put the following question to the Judges, adjourned to the next day.

"Supposing a peer, so indicted and convicted, ought by law to receive such judgment as aforesaid, and the day appointed by the judgment for execution should lapse before such execution done, whether a new time may be appointed for the execution, and by whom?"†

On the eighteenth, the House then sitting in the Chamber of Parliament, the Lord Chief Baron, in the absence of the Chief Justice of the Common Pleas, delivered in writing the opinion of the Judges, which they had agreed on, and reduced into form that morning.

His Lordship added many weighty reasons in support of the opinion, which he urged with great strength and propriety, and delivered with a becoming dignity.

TO THE SECOND QUESTION.

"Supposing the day appointed by the judgment for execution should lapse before such execution done (which however the law will not presume), we are all of opinion, that a new time may be appointed for the execution, either by the High Court of Parliament, before which such peer shall have been attainted, or by the Court of King's Bench, the Parliament then not sitting; the Record of the Attainder being properly removed into that Court.‡"

The reasons upon which the Judges founded their answer to the question relating to the further proceedings of the House after the High Steward's commission dissolved, which is usually done upon pronouncing judgment, may possibly require some farther discussion. I will, therefore, before I conclude, mention those which weighed with me, and, I believe, with many others of the Judges.

Every proceeding in the House of Peers, acting in its judicial capacity, whether upon Writ of Error, Impeachment, or Indictment, removed thither by Certiorari, is in judgment of law a proceeding before the King in Parliament; and therefore the House, in all those cases, may not improperly be styled, The Court of our Lord the King in Parliament.

This Court is founded upon immemorial usage, upon the law and custom of Parliament, and is part of the original system of our constitution.

It is open for all the purposes of judicature, during the continuance of the Parliament; it openeth at the beginning and shutteth at the end of every session; just as the Court of King's Bench, which is likewise in judgment of law held before the King himself, openeth and shutteth with the Term.

The authority of this Court, or, if I may use the expression, its constant activity for the ends of public justice, independent of any special powers derived from the Crown, is not doubted in the case of Writs of Errors from those courts of law whence error lieth in Parliament, and of impeachments for misdemeanors.

It was formerly doubted, whether, in case of an impeachment for treason, and in the case of an indictment against a peer for any capital crime, removed into Parliament by Certiorari, whether in these cases the Court can proceed to trial and judgment, without a High Steward, appointed by special commission from the Crown.

This doubt seemeth to have arisen from the not distinguishing between a proceeding in the Court of the High Steward, and that before the King in Parliament. The name, style, and title of office is the same in both cases; but the office, the powers, and pre-eminences annexed to it, differ very widely; and so doth the constitution of the Courts where the offices are executed. The identity of the name may have confounded our ideas, as equivocal words often do, if the nature of things is not attended to; but the nature of the offices, properly stated, will I hope remove every doubt on these points.

In the Court of the High Steward, he alone is judge in all points of law and practice; the peers' triers are merely judges of fact, and are summoned by virtue of a

* Foster's Crown Law, page 138. 50. edit.
† Pa. 140.

† Pa. 139.
§ Pa. 141 to 153.

precept from the High Steward, to appear before him on the day appointed by him for the trial, *ut rei veritas melius sciri possit*.

The High Steward's commission, after reciting that an indictment hath been found against the Peer by the grand jury of the proper county, empowereth him to send for the indictment, to convene the prisoner before him, at such a day and place as he shall appoint, then and there to hear and determine the matter of such indictment; to cause the peers toiers, *et si tales, per quos rei veritas melius sciri poterit*, at the same day and place to appeal before him, *veritateque inde competita*, to proceed to judgment according to the law and custom of England, and thereupon to award execution.*

By this it is plain that the sole right of judicature is, in cases of this kind, vested in the High Steward, that it resideth solely in his person; and consequently without this commission, which is but in nature of a commission of Oyer and Terminer, no one step can be taken in order to a trial; and that when his commission is dissolved, which he declareth by breaking his staff, the Court no longer existeth.

But in a trial of a peer in a full Parliament, or, to speak with legal precision, before the King in Parliament, for a capital offence, whether upon impeachment or indictment, the case is quite otherwise; every peer present at the trial, and every temporal peer, hath a right to be present in every part of the proceeding; voteth upon every question of law and fact; and the question is carried by the major vote, the High Steward himself voting merely as a peer and member of that Court, in common with the rest of the peers, and in no other right.

It hath indeed been usual, and very expedient it is, in point of order and regularity, and for the solemnity of the proceeding, to appoint an officer for presiding during the time of the trial, and until judgment, and to give him the style and title of Steward of England; but this maketh no sort of alteration in the constitution of the Court; it is the same Court, founded in immemorial usage, in the law and custom of Parliament, whether such appointment be made or not.

It abridges his judicial capacity in every case made touching the time and place of the trial, the postponing the trial from time to time upon petition, according to the nature and circumstances of the case, the

allowance or non-allowance of counsel to the prisoner, and other matters relative to the trial; and all this before an High Steward hath been appointed. And so little was it apprehended, in some cases which I shall mention presently, that the existence of the Court depended on the appointment of an High Steward, that the Court itself directed in what manner, and by what form of words, he should be appointed. It hath likewise received and recorded the prisoner's confession, which amounteth to a conviction, before the appointment of an High Steward; and hath allowed to prisoners the benefit of acts of general pardon, where they appeared intitled to it, as well without the appointment of an High Steward, as after his commission dissolved.

And when, in the case of impeachments, the Commons have sometimes, at conferences between the Houses, attempted to interpose in matters preparatory to the trial, the general answer hath been, "This is a point of judicature upon which the Lords will not confer; they impose silence upon themselves," or to that effect. I need not here cite instances; every man, who hath consulted the Journals of either House, hath met with many of them.

I will now cite a few cases, applicable, in my opinion, to the present question. And I shall confine myself to such as have happened since the Restoration. Because, in questions of this kind, modern cases, settled with deliberation, and upon a view of former precedents, give more light and satisfaction than the deepest search into antiquity can afford. And also because the prerogatives of the Crown, the privileges of Parliament, and the rights of the subject in general, appear to me to have been more studied, and better understood, at and for some years before that period, than in former ages.

In the case of the Earl of Danby, and the Popish Lords then under impeachments †, the Lords, on the 6th of May, 1679 appointed time and place for hearing the Earl of Danby, by his counsel, upon the validity of his plea of pardon, and for the trials of the other Lords; and voided an address to his Majesty, praying that he would be pleased to appoint an High Steward for those purposes.

These votes were, on the next day, communicated to the Commons by a message in the usual manner.

On the 4th, at a conference between the

* See Lord Clarendon's commission as High Steward, and the writs and precepts preparatory to the trial, in Lord Mordaunt's case, St. Tr. vol. vii.

† See the orders previous to the trial, in the cases of the Lords Kilmarnock, &c. and Lord Lowry, and many other modern cases.

‡ Lords Journals.

Houses, upon the subject matter of that message, the Commons expressed themselves to the following effect: "They cannot apprehend what should induce your Lordships to address his Majesty for an High Steward, for determining the validity of the pardon which hath been pleaded by the Earl of Danby, as also for the trial of the other five Lords, because they conceive the constituting an High Steward is not necessary, but that judgment may be given in Parliament upon impeachment without an High Steward;" and concluded with a proposition, that for avoiding any interruption or delay, a Committee of both Houses might be nominated to consider of the most proper ways and methods of proceeding.

This proposition the House of Peers, after a long debate, rejected.

Disfentibus, Finch*, Chancellor, and many other Lords.

However, on the 11th, the Commons proposition of the 8th was, upon a second debate, agreed to; and the Lord Chancellor, Lord President, and ten other Lords, were named of the Committee, to meet and confer with a Committee of the Commons.

The next day the Lord President reported, that the Committees of both Houses met that morning, and made an entrance into the business referred to them: That the Commons desired to see the commissions that are prepared for an High Steward at these trials, and also the commissions in the Lord Pembroke's and the Lord Morley's cases.

That to this the Lords Committees said, "*The High Steward is but Speaker pro tempore, and giveth his vote as well as the other Lords. This changeth not the nature of the Court.*" And the Lords declared they "have power enough to proceed to trial, though the King should not name an High Steward †."

Accordingly, on the same day. "*It is declared and ordered, by the Lords Spiritual and Temporal in Parliament assembled, that the office of an High Steward, upon trials of Peers upon impeachments, is not necessary to*

the House of Peers; but that the Lords may proceed in such trials if an High Steward be not appointed, according to their humble desire."

"That this seemed to be a satisfaction to the Commons, provided it was entered in the Lords' Journals, which are records."

On the 13th the Lord President reported, That the Committees of both Houses had met that morning, and discoursed, in the first place, on the matter of a Lord High Steward, and had perused former commissions for the office of High Steward; and then, putting the House in mind of the order and resolutions of the preceding day, proposed from the Committees that a new commission might issue, so as the wards in the commission may be thus changed, viz. Instead of *Ad pro eo quod Offitium Seneschalli Anglie cuius presentia in hac parte requiritur et absque jam vacat.* may be inserted, *Ad pro eo quod Proceres Et Magnates in Parlamento nostro assembleti, Nobis armistiter supplicaverunt ut Seneschallum Anglie pro hac vice Constituire dignaremur;* to which the House agreed ‡.

It must be admitted, that precedents drawn from times of ferment and jealousy, as these were, less many of their weight, since passed in and party-prejudice generally mingle in the contest; yet let it be remembered, that these are Resolutions in which both Houses concurred, and in which the rights of both were thought to be very nearly concerned; the Commons right of interposing with effect, and the whole judicature of the Lords in capital cases. For if the appointment of an High Steward was admitted to be of absolute necessity (however necessary it may be for the regularity and solemnity of the proceeding during the trial, and until judgment, which I do not dispute), every impeachment may, for a reason too obvious to be mentioned, be rendered ineffectual, and the judicature of the Lords, in all capital cases, nugatory.

It was from a jealousy of this kind, not at that juncture altogether groundless, and to guard against every thing from

* Afterwards Earl of Nottingham.

† In the Commons Journal of the 15th of May it standeth thus: Their Lordships further declare to the Committee, that a Lord High Steward was made *hac vice* only. That notwithstanding the making of a Lord High Steward the Court remained the same, and was not thereby altered, but still remained the Court of Peers in Parliament. That the Lord High Steward was but as a Speaker or Chairman, for the more orderly proceeding at the trials.

‡ This Resolution my Lord Chief Baron referred to and cited in his argument upon the second question proposed to the Judges, which is before stated.

§ This amendment arose from an exception taken to the commission by the Committee for the Commons, which, as it then stood, did in their opinion imply that the constituting a Lord High Steward was necessary. Whereupon it was agreed by the whole Committee of Lords and Commons, that the commission should be recalled, and a new commission, according to the said amendment, issue, to bear date after the order and resolution of the 12th (Commons Journal of the 15th of May).

whence the necessity of an High Steward in the case of an impeachment might be inferred, that the Commons proposed, and the Lords readily agreed to the amendment in the Steward's commission, which I have already stated. And it hath, I confess, great weight with me, that this amendment, which was at the same time directed in the cases of the five Popish Lords, when commissions should pass for their trials, hath taken place in every commission upon impeachments for treason since that time*. And I cannot help remarking, that in the case of Lovat, when neither the heat of the times, nor the jealousy of parties, had any share in the proceeding, the House ordered, "That the commission for appointing a Lord High Steward shall be in the like form as that for the trial of Lord Viscount Stafford, as entered in the Journal of this House on the 30th of November 1680, except that the same shall be in the English language†."

I will make a short observation on this matter.

The order, on the 13th of May 1679, for varying the form of the commission, was, as appeareth by the Journal, plainly made in consequence of the Resolution of the 12th, and was founded on it; and consequently, the constant unvarying practice, with regard to the new form, goeth, in my opinion, a great way towards shewing, that in the sense of all succeeding times, that Resolution was not the result of faction, or a blameable jealousy, but was founded in sound reason and true policy.

It may be objected, that the Resolution of the 12th of May 1679 goeth no further than to a proceeding upon impeachment.

The letter of the Resolution, it is admitted, goeth no further; but this is easily accounted for: A proceeding by impeachment was the subject matter of the conference, and the Commons had no pretence to interpose in any other. But what say the Lords? The High Steward is but as a Speaker or Chairman, *pro tempore*, for the more orderly proceeding at the trials; the appointment of him doth not alter the nature of the Court, which still remaineth the Court of Peers in Parliament. From these premises they draw the conclusion I have mentioned. Are not these premises equally true in the case of a proceeding upon indictment?—They undoubtedly are.

It must likewise be admitted, that in the proceeding upon indictment, the High Steward's commission hath never varied from the ancient form in such cases; the words objected to by the Commons, *Ac*

pro eo quod Officium Seneschalli Angliæ (sujus presentia in hac parte requiritur) ut occupamus jam vacat, are still retained. But this proveth no more than that the Great Seal, having no authority to vary in point of form, hath from time to time very prudently followed ancient precedents.

I have already stated the substance of the commission, in a proceeding in the Court of the High Steward. I will now state the substance of that in a proceeding in the Court of the Peers in Parliament; and shall make use of that in the case of the Earl of Kilmarnock and others, as being the latest, and, in point of form, agreeing with the former precedents.

The commission, after reciting that William Earl of Kilmarnock, &c. stand indicted before commissioners of gaol delivery, in the county of Surrey, for high treason, in levying war against the King; and that the King intendeth that the said William Earl of Kilmarnock, &c. shall be heard, examined, sentenced, and adjudged before himself in this present Parliament, touching the said treason, and for that the office of Steward of Great Britain (whose presence is required upon this occasion) is now vacant as we are informed, appointeth the then Lord Chancellor Steward of Great Britain, to bear, execute, and exercise (for this time) the said office, with all things due and belonging to the same office, in that behalf.

What, therefore, are the things due and belonging to the office in a case of this kind? Not, as in the Court of the High Steward, a right of judicature; for the commission itself supposeth that right to reside in a Court then subsisting before the King in Parliament. The parties are to be there heard, sentenced, and adjudged. What share in the proceeding doth the High Steward then take? By the practice and usage of the Court of the Peers in Parliament, he giveth his vote as a member thereof with the rest of the Peers; but for the sake of regularity and order, he presideth during the trial, and until judgment, as Chairman or Speaker, *pro tempore*. In that respect, therefore, it may be properly enough said, that his presence is required, during the trial, and until judgment, and in no other. Herein I see no difference between the case of an impeachment, and of an indictment.

I say during the time of the trial, and until judgment, because the Court hath, as I observed before, from time to time, done various acts, plainly judicial, before the appointment of an High Steward, and where no High Steward hath ever been appointed, and even after the commission dissolved.

* See, in the State Trials, the commissions in the cases of the Earl of Oxford, Earl of Devonshire, and others—Lord Winton and Lord Lovat.

† See the proceedings printed by order of the House of Lords (4th February 1746).

I will to this purpose cite a few cases.

I begin with the latest, because they are the latest, and were ruled with great deliberation, and for the most part upon a view of former precedents.

In the case of the Earl of Kilmarnock and others, the Lords, on the 24th of June 1746, ordered, that a writ or writs of certiorari be issued for removing the indictments before the House. And on the 26th the writ, which is made returnable before the King in Parliament, with the return and indictments, was received and read. On the next day, upon the report of the Lords' Committee, that they had been attended by the two Chief Justices and Chief Baron, and had heard them touching the construction of the act of the seventh and eighth of King William, "for regulating trials in cases of high treason, and misprision of treason," the House, upon reading the report, came to several resolutions, founded for the most part on the construction of that act. What that construction was, appeareth from the Lord High Steward's address to the prisoners just before their arraignment. Having mentioned that act, as one happy consequence of the Revolution, he addeth, "However injuriously that Revolution hath been traced, whatever attempts have been made to subvert this happy establishment founded on it, your Lordships will now have the benefit of that law in its full extent."

I need not after this mention any other judicial acts done by the House in this case, before the appointment of the High Steward—many there are. For the putting a construction upon an act relative to the conduct of the court, and the right of the subject at the trial, and in the proceedings preparatory to it, and this in a case entirely new, and upon a point, to say no more in this place, not extremely clear, was undoubtedly an exercise of authority proper only for a court having full cognizance of the cause.

I will not minutely enumerate the several orders made preparatory to the trial of Lord Lovat, and in the several cases I shall have occasion to mention, touching the time and place of the trial, the allowance or non-allowance of counsel, and other matters of the like kind, all plainly judicial, because the like orders occur in all the cases where a journal of the preparatory steps hath been published by order of the Peers. With regard to Lord Lovat's case, I think the order of directing the form of the High Steward's commission, which I have already taken notice of, is not very consistent with the idea of a court, whose powers can be supposed to depend, at any

point of time, upon the existence or dissolution of that commission.

In the case of the Earl of Derwentwater, and the other Lords impeached at the same time, the House received and recorded the confessions of those of them who pleaded guilty, long before the teste of the High Steward's commission, which issued merely for the solemnity of giving judgment against them upon their conviction.

This appeareth by the commission itself. It reciteth, that the Earl of Derwentwater, and others, *coram Nobis in presenti Parlamento*, had been impeached by the Commons for high treason, and had, *coram Nobis in presenti Parlamento*, pleaded guilty to that impeachment; and that the King, intending that the said Earl of Derwentwater and others, *de & pro proditorum unde ipsi ut prefertur impetiti, accusati, & convicti existant coram Nobis in presenti Parlamento, secundum Legem & Consuetudinem hujus Regni Nostri Magnae Britanniae, Audiantur, Sentententur, & Adjudicentur*, constituteth the then Lord Chancellor High Steward (*hac vice*) to do and execute all things which to the office of High Steward in that behalf do belong.

The receiving and recording the confession of the prisoners, which amounted to a conviction, so that nothing remained but proceeding to judgment, was certainly an exercise of judicial authority, which no assembly, how great soever, not having full cognizance of the cause, could exercise.

In the case of Lord Salisbury*, who had been impeached by the Commons for high treason, the Lords, upon his petition, allowed him the benefit of the act of general pardon passed in the second year of William and Mary, so far as to discharge him from his imprisonment upon a construction they put upon that act, no High Steward ever having been appointed in that case.

On the second of October 1690, upon reading the Earl's petition, setting forth that he had been a prisoner for a year and nine months in the Tower, notwithstanding the late act of free and general pardon, and praying to be discharged, the Lords ordered the Judges to attend on the Monday following, to give their opinions, whether the said Earl be pardoned by the act. On the 6th the Judges delivered their opinions, that if his offence was committed before the 19th of February 1688, and not in Ireland or beyond the seas, he is pardoned. Whereupon it was ordered, that he be admitted to bail, and the next day he and his sureties entered into a recognizance of bail, himself in 10,000*l.* and two sureties in 5,000*l.* each; and on the 30th he and his sureties were, after a

* See the Journals of the Lords.

long debate, discharged from their recognizance.

It will not be material to enquire whether the House did right in discharging the Earl without giving the Commons an opportunity of being heard; since, in fact, they claimed and exercised a right of judicature without a High Steward—which is the only use I make of this case.

They did the same in the case of the Earl of Carnwarth, the Lords Widdrington and Nairn, long after the High Steward's commission dissolved.

These Lords had judgment passed on them at the same time that judgment was given against the Lords Derwentwater, Nithdale, and Kenmuire; and judgment being given, the High Steward immediately broke his staff, and declared the commission dissolved. They continued prisoners in the Tower under reprieves, till the passing of the Act of General Pardon, in the third of George the First.

On the 21st of November 1717*, the House being informed that these Lords had severally entered into recognizances before one of the Judges of the Court of King's Bench, for their appearance in the House in this session of Parliament; and that the Lords Carnwarth and Widdrington were attending accordingly; and that the Lord Nairn was ill at Bath, and could not then attend; the Lords Carnwarth and Widdrington were called in; and severally, at the bar, prayed that their appearance might be recorded; and likewise prayed the benefit of the Act of his Majesty's General and Free Pardon†.

Whereupon the House ordered that their appearance be recorded, and that they attend again to-morrow, in order to plead the pardon. And the recognizance of the Lord Nairn was respited till that day fortnight.

On the morrow the Lords Carnwarth and Widdrington, then attending, were called in; and the Lord Chancellor acquainted them severally, that it appeared by the records of the House, that they severally stood attainted of high treason; and asked them severally, what they had to say, why they should not be remanded to the Tower of London?

Thereupon they severally, upon their knees, prayed the benefit of the act, and that they might have their lives and liberty purchased thereunto.

And the Attorney-General, who then attended for that purpose, declaring that he had no objection, on his Majesty's behalf, to what was prayed, conceiving that those Lords, not having made any escape since

their conviction, were entitled to the benefit of the act; the House, after reading the clause in the act relating to that matter, agreed that they should be allowed the benefit of the pardon, as to their lives and liberties; and discharged their recognizances, and gave them leave to depart without farther day given for their appearance‡.

On the 6th of December following, the like proceedings were had, and the like orders made, in the case of Lord Nairn.

I observe that the Lord Chancellor did not ask these Lords what they had to say why execution should not be awarded. There was, it is probable, some little delicacy as to that point. But since the allowance of the benefit of the act, as to life and liberty, which was all that was prayed, was an effectual bar to any future imprisonment on that account, and also to execution, and might have been pleaded as such in any court whatsoever; the whole proceeding must be admitted to have been in a court having complete jurisdiction in the case, notwithstanding the High Steward's commission had been long dissolved—which is all the use I intended to make of this case.

I will not recapitulate; the cases I have cited, and the conclusions drawn from them, are brought into a very narrow compass. I will only add, it would sound extremely harsh to say, that a court of criminal jurisdiction, founded in immemorial usage, and held in judgment of law before the King himself, can in any event whatever be under an utter incapacity of proceeding to trial and judgment, either of condemnation or acquittal, the ultimate objects of every criminal proceeding, without certain supplemental powers derived from the Crown.

These cases, with the observations I have made on them, I hope sufficiently warrant the opinion of the Judges upon that part of the second question in the case of the late Earl Ferrers, which I have already mentioned. And also what was advanced by the Lord Chief Baron in his argument on that question, "That though the office of High Steward should happen to determine before execution done according to the judgment, yet the Court of Peers in Parliament, where that judgment was given, would subsist for all the purposes of justice during the sitting of the Parliament." And consequently, that in the case supposed by the question, that Court might appoint a new day for the execution.

* Lords Journals.

1717.

† 3 G. I. c. 19.

‡ See sect. 45. of the 3. G. I.

No. 2.

QUESTIONS REFERRED BY THE LORDS
TO THE JUDGES IN THE IMPEACH-
MENT OF WARREN HASTINGS, ESQ.
AND THE ANSWERS OF THE JUDGES.
—EXTRACTED FROM THE LORDS'
JOURNALS AND MINUTES.

I. QUESTION.—Whether, when a witness produced and examined in a criminal proceeding by a prosecutor, disclaims all knowledge of any matter so interrogated, it be competent for such prosecutor to pursue such examination, by proposing a question containing the particulars of an answer supposed to have been made by such witness before a Committee of the House of Commons, or in any other place; and by demanding of him, whether the particulars so suggested were not the answer he had so made?

1788, Feb. 29. Pa. 418.

ANSWER.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges, upon the question of law put to them on Friday the 29th of February last, as follows:—“That “when a witness produced and examined “in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it is not competent “for such prosecutor to pursue such examination by proposing a question containing the particulars of an answer supposed to have been made by such witness before a Committee of the House of Commons, or in any other place; and “by demanding of him whether the particulars so suggested were not the answer “he had so made.”

1788, April 10. Pa. 552.

II. QUESTION.—Whether it be competent for the Managers to produce an examination taken without oath by the rest of the Council, in the absence of Mr. Hastings, the Governor General; charging Mr. Hastings with corruptly receiving three lacs 54,105 rupees, which examination came to his knowledge, and was by him transmitted to the Court of Directors as a proceeding of the said Councilors, in order to introduce the proof of his demerit thereupon;—it being alledged by the Managers for the Commons, that he took no steps to clear himself in the opinion of the said Directors, of the guilt thereby imputed, but that he took active means to prevent the examination by the said Councilors of his servant Cantoobaboo?

1789, May 14. Pa. 677.

ANSWER.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges; upon the

said question, in the negative—and gave his reasons. 1789, May 20. Pa. 718.

III. QUESTION.—Whether the instructions from the Court of Directors of the United Company of Merchants of England trading to the East Indies to Warren Hastings, Esq. Governor General; Lieutenant General John Clavering, the Honourable George Monson, Richard Barwell, Esq. and Philip Francis, Esq. Councilors, constituted and appointed the Governor General and Council of the said United Company's Presidency of Fort William in Bengal, by an act of Parliament passed in the last session, intituled, “An Act for establishing certain Regulations “for the better Management of the Affairs “of the East India Company, as well in “India as in Europe;” of the 29th of March 1774, Par. 31, 32, and 35; the consultation of the 11th of March 1775; the consultation of the 13th of March 1775, up to the time that Mr. Hastings left the Council; the consultation of the 20th of March 1775; the letter written by Mr. Hastings to the Court of Directors on the 25th of March 1775—it being alledged that Mr. Hastings took no steps to explain or defend his conduct—are sufficient to introduce the examination of Nundcomar, or the proceedings of the rest of the Councilors on the said 15th of March, after Mr. Hastings left the Council, such examination and proceedings charging Mr. Hastings with corruptly receiving three lacs 54,105 rupees?

1789, May 21. Pa. 730.

ANSWER.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges, upon the said question, in the negative—and gave his reasons.

1789, May 27. Pa. 771.

IV. QUESTION.—Whether the public accounts of the Nizamut and Bhela, under the seal of the Begums, attested also by the Nabob, and transmitted by Mr. Goring to the Board of Council at Calcutta, in a letter bearing date the 29th of June 1775, received by them; recorded without objection on the part of Mr. Hastings, and transmitted by him likewise without objection to the Court of Directors, and alledged to contain accounts of money received by Mr. Hastings; and it being in proof that Mr. Hastings, on the 14th of May 1778, moved the Board to comply with the requisitions of the Nabob Mobarek ul Dowla, to re-appoint the Munny Begum and Rajah Goordas (who made up those accounts) to the respective offices they before filled—and which was accordingly resolved by the Board—ought to be read?

1789, June 17. Pa. 855.

ANSWER.

ANSWER.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges, upon the said question, in the negative—and gave his reasons.

1789, June 24. Pa. 982.

V. QUESTION.—Whether the paper delivered by Sir Elijah Impey, on the 7th of July 1775, in the Supreme Court, to the Secretary of the Supreme Council, in order to be transmitted to the Council as the resolution of the Court in respect to the claim made for Roy Radachurn, on account of his being Vakcel of the Nabob Mobarek ul Dowlah—and which paper was the subject of the deliberation of the Council on the 31st of July 1775, Mr. Hastings being then present, and was by them transmitted to the Court of Directors, as a ground for such instructions from the Court of Directors as the occasion might seem to require—may be admitted as evidence of the actual state and situation of the Nabob, with reference to the English government?

1789, July 2. Pa. 1003.

ANSWER.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges, upon the said question, in the affirmative—and gave his reasons.

1789, July 7. Pa. 1030.

VI. QUESTION.—Whether it be, or be not, competent to the Managers for the Commons to give evidence upon the charge in the sixth article, to prove that the rent at which the defendant, Warren Hastings, let the lands mentioned in the said sixth article of charge to Kellaram, fell into arrear and was deficient—and whether, if proof were offered that the rent fell in arrear immediately after the letting, the evidence would in that case be competent?

1790, April 12. Pa. 364.

ANSWER.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question—"That it is not competent to the Managers for the Commons to give evidence upon the charge in the sixth article, to prove that the rent at which the defendant, Warren Hastings, let the lands mentioned in the said sixth article of charge to Kellaram, fell into arrear, and was deficient"—and gave his reasons.

1790, April 27. Pa. 388.

VII. QUESTION.—Whether it be competent for the Managers for the Commons to put the following question to the witnesses, upon the sixth article of

charge, viz. "What impression the letting of the lands to Kellaram and Cullian Sing made on the minds of the inhabitants of that country?"

1790, April 27. Pa. 391.

ANSWER.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question—"That it is not competent to the Managers for the Commons to put the following question to the witnesses, upon the sixth article of charge, viz. What impression the letting of the lands to Kellaram and Cullian Sing made on the minds of the inhabitants of that country"—and gave his reasons.

1790, April 29. Pa. 413.

VIII. QUESTION.—Whether it be competent to the Managers for the Commons to put the following question to the witnesses, upon the seventh article of charge, viz. "Whether more oppressions did actually exist under the new institution than the old?"

1790, April 29. Pa. 415.

ANSWER.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question—"That it is not competent to the Managers for the Commons to put the following question to the witnesses, upon the seventh article of charge, viz. Whether more oppressions did actually exist under the new institution than under the old"—and gave his reasons.

1790, May 4. Pa. 428.

IX. QUESTION.—Whether the letter of the 13th of April 1781, can be given in evidence by the Managers for the Commons, to prove that the letter of the 5th of May 1781, already given in evidence, relative to the abolition of the Provincial Council, and the subsequent appointment of the Committee of Revenue, was false in any other particular than that which is charged in the 7th article of charge?

1790, May 20. Pa. 557.

ANSWER.—The Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question—"That it is not competent for the Managers on the part of the Commons to give any evidence on the seventh article of impeachment, to prove that the letter of the 5th of May 1781 is false in any other particular than that wherein it is expressly charged to be false"—and gave his reasons.

1790, June 2. Pa. 684.

X. QUESTION,

P A R T VIII.

1795:

BEING THE

EIGHTH SESSION (OR YEAR) OF THE TRIAL.

IN the House of Lords, on TUESDAY, JANUARY 6, Lord Grenville moved, that the further consideration of the proceedings on Mr. HASTINGS' TRIAL should be postponed to Tuesday the 13th.

able to attend in his place; in the mean time he would move that a Committee be appointed to inspect the Journals, and to report to their Lordships all that appeared as to the mode of giving judgment on trials of high crimes and misdemeanors.

TUESDAY, JAN. 13.

The Lord Chancellor (Lord LOUGHBOROUGH) observed, that the indisposition of Lord Thurlow induced him to propose to postpone the further consideration of the Impeachment until that noble Lord was

THURSDAY, FEB. 19.

The Report * was presented, and ordered to be taken into consideration on Thursday the 26th of February.

THURSDAY,

* The following is a brief Abstract of the Report, including the *thirteen* instances upon the Journals:

The first is, Richard Lyons, a Merchant of London, 50 Edw. 3. A. D. 1376. He was charged by the Commons with exporting wool to foreign parts, which were not of the staple at Calais—2d, with collecting imposts on wool for his own use, without assent of Parliament, or authority from the King—3d, for an additional loan to the King for buying up the King's debts at a large discount, and for receiving brokerage for obtaining payment of the same.

—4th, for receiving interest on money lent at an excessive rate of usury.—The sentence was—That his goods and lands should be seized into the King's hands, and his body imprisoned during pleasure.

William Lord Latimer, in the same year, was convicted of similar practices, and ordered to be imprisoned, and make fine and ransom at the King's pleasure.

One Pecchee was at the same time convicted of suing out an oppressive patent to monopolize sweet wines.—He was adjudged to prison, and to make a fine and ransom to the parties grieved.

Lord Nevill was impeached by the same House of Commons, for buying the King's tallies of Lady Ravensworth at a discount, and getting payment entire.—Judgment to make satisfaction to the Lady, and he further punished by imprisonment, fine and ransom.

The 1st of Richard 2d, 1377, the Commons prayed, that all who had surrendered the King's castles might be punished; upon which Sir Richard Scroope, Steward of the Household, arraigned them before the Lords, who convicted them, and they were condemned to suffer death.

Alice Perrers was afterwards arraigned for the same crime, and the Lords referred the trial to a Jury of the Household, who found her guilty.—The Lords ordered her to be banished.

10th of Richard 2, 1386, William De La Pole, Earl of Suffolk, was unanimously impeached by the Commons, for crimes and malversations of office. After a long hearing, the Lords gave judgment.—That the Earl's lands (except 20l. a year out of the Earldom) should be seized to the King's use. The Lords annulled several illegal grants, and dismissed three other articles of the charge.

THURSDAY, FEB. 26.

The Order of the Day being read for taking the Report into consideration,

Lord Thurlow rose, and observed, that in his opinion the various precedents reported to their Lordships, did not appear to come near the case under their deliberation. The only one which bore a resemblance to it, was the case of Lord Middlesex, who was impeached on a variety of articles, some of which contained different allegations. The Impeachment of Mr. Hastings was in many points distinct from every other case that had been brought before a court of justice in Great Britain. The number of articles were twenty, each containing a great number of allegations: of this number, the Commons had given no evidence upon

fourteen, and upon very inconsiderable parts of three more; so that on four-fifths of the Articles, it may be said that the Commons had given no evidence at all.* It appeared, therefore, only an act of justice to the Defendant to acquit him, in the first instance, of four-fifths of the matter charged in the articles. As to the articles on which the Commons had given evidence, he thought it impossible, either in justice to the Commons or to the Defendant, to put one question only on each article, as had been the general practice; because each article comprised so many criminal facts, that, if any difference of opinion should arise amongst their Lordships, it would be necessary to put a separate question upon each allegation.

He should therefore propose that the House would resolve itself into a Commit-

17th of James 1st, 1621, Lord Viscount St. Albans, (Bacon) the Chancellor, was accused of frauds and corruption in his office. On the 24th of April 1621, he sent his confession and submission to the House by the Prince. On the 2d of May he was found guilty, and on the 3d of May it was agreed to pass sentence; but, upon regard of his submission, and the Prince imploring mercy of the House, the question, "Whether he should be suspended from all his titles of nobility during life?" was lost by a majority.—They only voted that the King should take the Great Seal from him, which was accordingly done.

In the same Parliament, Sir Francis Mithel was tried for a misdemeanor, and was found *guilty* to be censured,† and then discharged.

20th James 1st, 1624, the Earl of Middlesex, Lord High Treasurer, was accused by the Commons of high crimes and misdemeanors, viz. malversations in the King's Wardrobe, Bribes by the farmers of the Customs, and Compositions at Ports, the Ordinance, Courts of Wards, &c. &c. On the 12th of May he was put to the Bar, and heard in his defence. On the same day, anti-meridian, he was censured for his conduct in the Wardrobe. The same day, post meridian*, he was censured for the Bribes. The same day he was acquitted of the charge respecting Sugar and Tobacco. The same day the House came into the Hall, and acquitted the prisoner upon a charge of taking composition at the port of Bristol. The same day, the Ordinance charge was considered and debated; it was agreed that he should be censured. The same day the charge respecting misdemeanors in the Court of Wards was considered, and determined that the Earl was censurable. The 13th of May the Earl was brought to the Bar, and judgment of censure was passed, upon the proofs of bribery, extortions, oppressions, wrongs, and deceipts †.

Doctor Roger Mainwaring, in 1628, the 11th of June, was impeached for three seditious sermons, two before the King, and one at his own parish church on the 4th of May. On the 14th of June, he had judgment of censure, and was sent to the Fleet Prison, during the sitting of that Parliament.

Dr. Henry Sacheverell was impeached by the Commons in 1709. The 25th of January he appeared at the Bar, and delivered his answer to the articles. On the 20th of March he was found guilty, and judgment passed on the 21st—To be enjoined not to preach for three years, and that the two printed sermons should be burnt by the common hangman.

The last precedent is the well-known case of the Earl of Macclesfield, in the year 1725. It commenced on the 28th of April, and finished the 27th of May, when the Speaker of the Commons demanded judgment, which was immediately pronounced—To be fined in the sum of thirty thousand pounds, and to be imprisoned in the Tower until the sum shall be paid.—Here end the precedents.

* These charges, which were proven, at one view, appear to contain the whole of what is charged against Mr. Hastings.

† Six very material charges were determined in one day, and six adjournments to Westminster-Hall. If the same kind of industry had been used with respect to Mr. Hastings, his trial would not have lasted above seven Days, instead of Seven Years.

tee of the whole House, where the matter might be fully discussed, and where every Lord would have an opportunity of delivering his sentiments in the fullest manner.

The Lord Chancellor concurred in opinion with Lord Thurlow's motion.

The Report was therefore referred to a Committee of the whole House.

On being asked by the Chancellor what day he would propose to proceed, Lord Thurlow said he was ready at any time, having gone through the whole of the evidence with all the attention he was capable of; but as some Noble Lords might wish for a further time to refresh their memories, he proposed to proceed on the following Monday.—Agreed to.

MONDAY, MARCH 2.

BENARES CHARGE.

Lord Thurlow rose to open the mode of proceeding, and explained at considerable length his idea of the nature of the present trial. His Lordship complained much of the looseness and inaccuracy with which the Articles were drawn, containing many assertions either palpably false or grossly absurd, and which a very moderate application to the documents in the possession of those who supported the prosecution, would have convinced them could not be substantiated.

He was far from wishing to throw an imputation on the Managers for these inaccuracies, and still less on the House of Commons, who could not be supposed to look at the minutiae of such extensive Articles, comprehending the important transactions of a large empire for thirteen years. The zeal of the parties who drew the Articles had certainly exceeded their discretion. The Impeachment, however, might now be said to rest upon four points—Breach of Faith, Oppression, and Injustice, as in the two Articles of Cheyt Sing and the Begum; Corruption, as in the Article of the Presents; and a wanton Waste of the Public Money for Private Purposes, as in the Contracts. In considering the first two points, in his opinion, it would become their Lordships to reflect on the situation in which Mr. Hastings was placed. Possessed of absolute power, the question would be, Had he exerted that power for the public good, or had he, on any occasion, been actuated by base or malicious motives? If in the case of Cheyt Sing and the Begums they should be of opinion that he was neither malicious

nor corrupt, the Charges naturally fell to the ground. It was the duty of Mr. Hastings to preserve the empire committed to his care, and in pursuit of that object to adopt the measures best adapted to attain his end.

The preamble to the Articles was, in his Lordship's opinion, materially defective. It charged Mr. Hastings as the author, and fixed upon him the sole responsibility of all the acts recited in the Twenty Articles. The preamble contained a false statement of his situation, for the purpose of fixing responsibility upon him, for acts in some instances done by others; in some instances in which others participated; but as Mr. Hastings was the only person impeached, the preamble supposed him to possess the sole power in Bengal. Yet from 1772 to 1774 he was the President of a Council of thirteen; from 1774 to 1776 he was President of a Council of five, and invariably in a minority. From 1776 to the time of his departure in 1785 he sometimes possessed that power which his casting vote in Council gave him, and on many important public occasions was over-ruled by a majority. By a precedent at that time on the table it appeared that the House, in the case of the Earl of Suffolk, had discharged several Articles of his Impeachment, because other Lords of the Council, who were concerned with him in the matter contained in the Articles, were not impeached.

As to the mode of proceeding, his Lordship thought that the only way to do justice both to the Public and the Defendant, would be to take up the allegations in the Articles *seriatim*, if any difference of opinion should exist. For instance, if their Lordships were of opinion that the Commons had not made good any part of the Benares Article, then a single question might decide it; but if any Noble Lord thought that some allegations were made out, and others not, it would be necessary to put a vote upon each, since, in point of fact, there were so many acts stated to be criminal, that the Benares Charge did in truth contain a great number of Articles, on each of which, if a difference of opinion existed, they must come to a separate vote.

The Chancellor concurred generally in what had fallen from Lord Thurlow, but could not condescend that Mr. Hastings would be justified in any gross abuse of the arbitrary power he possessed, even though it should be made appear that he was actuated neither by corrupt nor by
malicious

TUESDAY, MARCH 3.

malicious motives. Mr. Hastings having great power lodged in his hands, was undoubtedly responsible to his country for a proper use of that power; and however pure his intentions might have been, if he violated every principle of morality and justice, he should not think that any public exigency ought to be pleaded as a justification.

His Lordship fully concurred with the former Noble Lord as to the looseness and carelessness with which the Articles were drawn, and the great length to which they ran; and conceived also that the mode proposed to be adopted by him was the most proper.

Lord Thurlow said, as their Lordships seemed to be unanimously agreed to proceed point by point, he would begin with the Benares Charge. And here he conceived no question could possibly arise until they came to the demand made by the Bengal Government for a war subsidy in 1778. This demand the Commons assert, though made apparently on public grounds, was in fact brought forward to satisfy the preconceived malice of Mr. Hastings, and was part of a regular plan of Mr. Hastings to effect the total ruin of Cheyt Sing. Their Lordships therefore must examine the question of right, and must look, tho' he confessed he had in vain done it, for the evidence to substantiate the charge of malice. If there was no proof of malice, the Charge fell to the ground, unless Mr Hastings' acts were of such a nature as to exhibit ample proofs of the malicious motives in which they originated. In reviewing this subject, he saw the most perfect consistency in Mr. Hastings's conduct throughout, who began by declaring his perfect conviction of the right of the Company to demand military aid; and then appealed to the written instruments he had executed on the transfer of the sovereignty of Benares to the English, to prove we had not given up the right, and properly resented the Raja's disobedience. Mr. Francis, professing to entertain doubts as to the right, always concurred with Mr. Hastings in making the demands, but drew back in the years 1778 and 1779, on the Raja's delays in complying with those demands. In 1780 indeed he fully concurred with Mr. Hastings.

After a few words from Lord Moira and Lord Caernarvon, on the nature of Zemindary tenures, the Committee reported progress, and were appointed to meet on

The House being in a Committee, the Clerk proceeded to read from the evidence given on the prosecution and the defence, the several letters and consultations that had a reference to the demands made in the years 1778, 1779, 1780, the demand of cavalry, and some other points, which Lord Caernarvon desired might be read. From the number of books which were to be referred to, near three hours were employed in reading evidence, when

Lord Thurlow said, he was very sorry that he had undesignedly been the cause of so much of their Lordships time having been consumed, little to their edification. If he had not believed that less than half an hour would have completed all he wanted, he would have trusted to his own notes, which he now found were perfectly accurate; he would however assure their Lordships that he would not bring them into such a dilemma again.

The Committee then adjourned to

THURSDAY, MARCH 5.

Lord Moira rose, and said, he would not make a motion, but would state two propositions, leaving it to their Lordships to form any question out of them that they should think proper to submit to a vote.

His first proposition would be to this purport:

"That the government of Bengal had no right to exact a tribute from Cheyt Sing."

If this question was decided affirmatively, it would put an end to further discussion; if it were negatived, he would then state as a proposition naturally resulting from the negative of the former,

"That the government of Bengal had regularly exercised their right of sovereignty in exacting tribute from Cheyt Sing."

His Lordship added, that he certainly intended to vote against his own motion, because he was perfectly convinced that the Bengal Government had a right to demand military aid from Cheyt Sing in time of war, and that Mr. Hastings would have neglected his duty if he had not demanded it. He was equally convinced, that in making the several demands, Mr. Hastings was not actuated by malice, but by a sense of public duty. He was at the same time perfectly willing to adopt any other motion that might be made, which would

ald equally conduce to bring the merits of the case into discussion.

The Earl of Caernarvon observed, that vious to any discussion of the mode proceeding into the examination of theious allegations, it would well become dignity and the honour of their Lordships to settle what Lords had, and had a right to vote. He saw new faces the Committee every day; but it would to the eternal disgrace of their Lordships, if Lords who had not attended could ultimately vote in Westminster Hall. His Lordship objected to the motions of Lord Moira, and preferred the mode of taking the criminal allegations separately.

The Earl of Moira said in reply, that he was sure the Noble Earl did not allude to him as amongst the Lords who had not attended; for, except to some part of the reply in the last year, he had attended the trial very regularly. On this Article, however, the evidence brought by the prosecution had in his opinion so completely acquitted Mr. Hastings of all degree of blame, and so established his merits, that he for one would have been ready to acquit Mr. Hastings, had he not heard one word in his defence. As to his motions, their Lordships would recollect he had not made them, but merely stated them as propositions. He was ready to withdraw them, and to give way to any Noble Lord who might propose any other method of arguing and discussing the merits of the case.

The Earl of Coventry said, that though he perfectly agreed with the Noble Earl, that it would be in the highest degree indecent for Lords to vote who had not attended, he knew not how they could draw the line.

The Earl of Mansfield expressed the same sentiment. To himself the observation of the Noble Earl could not apply; for it had happened, by extraordinary good fortune, that in a trial which had lasted seven years, he had not been absent more than seven hours.

The Marquis of Lansdowne contended that it was the right of every Noble Lord, even those created in the present sessions, to vote if they pleased. But when he admitted the right, he would add, God forbid that in a single instance he should see the right exercised. Indeed there was no danger. He congratulated their Lordships on the grave, solemn, and judicial manner in which they were proceeding. It was highly to the credit of Government that nothing like party or influence ap-

PART VIII.

peared. A trial which had lasted seven years, and had attracted the attention and the wonder of the world, would now be determined by the fixed rules of law and justice. As to the Benares Article, he had attended it during the prosecution, and was ready, like the Noble Lord (Moira), to vote for the acquittal of Mr. Hastings, if he were to vote at all, which he certainly did not mean to do, having been most unwillingly compelled to discontinue his attendance by the state of his health, after the first two-and-twenty days of the trial. He had, however, read all the proceedings, and had certainly formed a clear and decided opinion upon the case. He should deem it his duty to attend the Committee, and to offer his sentiments from time to time if he thought it necessary.

The Earl of Caernarvon said, he was not convinced by any thing which he had heard, that the House had not a right to determine what Lords should and should not vote: He claimed it in justice to Mr. Hastings, in justice to their Lordships, some of whom might eventually at a future period be in his situation; and it appeared to him to be a most monstrous idea, abhorrent to every principle of the law of England, that judges who had not heard, should determine a criminal cause.

Lord Thurlow, though perfectly concurring in sentiment with the Noble Earl, as he believed every Lord present did, yet gave it as his opinion, that every Lord must draw the line for himself; his own conscience and his own sense of honour must determine how many days attendance entitled him to vote. If their Lordships thought they might controul the Court, the mode must be, to appoint a Committee, to examine what days the several Lords had attended, and then to determine how many days attendance entitled a Lord to vote. His own situation for the first five years of this trial, had made his attendance indispensable. He certainly had slackened in his attendance the two last years, and if for that reason he were to be excluded, it would save him much trouble; had he earlier known of such a Resolution, it would have saved him much more; since he had been employed for some months in going through an immense quantity of rubbish and trash, in the midst of which was dispersed the very little evidence of consequence in this cause. The Noble Lord who proposed the motions was willing not to make them; and he was so perfectly

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indifferent as to the mode in which the matter was discussed, that the manner of bringing it forward was not, in his opinion, worth the half hour that had been lost in debating it. For the sake, however, of coming to some point, he would move that "the Bengal Government had a right to demand military aid from Cheyt Sing."

The Lord Chancellor said, he had one objection only to the motion, it did not go to the whole extent of the Charge, and consequently would prove nugatory; because, supposing the right to be admitted and established, it would still remain a question, whether that right had been reasonably, expediently, and wisely exercised. His Lordship reviewed all the circumstances under which the subsidy had been claimed and received in 1778 and 1779; and said, he was ready to admit, that the Commons had not made good their Charge in respect to those two years; with regard to them, therefore, Mr. Hastings must stand acquitted. But the conduct of the Governor-General in relation to the transactions with Cheyt Sing, in the year 1780, appeared to him to merit a certain degree of blame; how far it might rise to a high crime and misdemeanor, would depend on other proceedings of the Governor-General, which remained to be discussed. His Lordship explained the ground on which he rested this observation, to be the fact of Mr. Hastings having, in the year 1780, received a present of two lack of rupees, and having altogether suppressed that circumstance from his Council, when they were about to make a further claim of five lack from Cheyt Sing, as the war subsidy.

Lord Thurlow declared, he was perfectly indifferent as to the form of the question they were to decide upon, provided it was clear and intelligible. He by no means wished that they should come to any decision in the Committee, which would either preclude or affect the full exercise of every Lord's judgment, when they should have to consider what should be the question to be put to him in Westminster Hall.

The Lord Chancellor coinciding with the Noble Lord,

Lord Thurlow agreed to take a question on each specific fact criminally alleged in the Charges, excepting only where they were so blended as to constitute collectively one head of Charge.

The Chairman of the Committee (Lord Wallingham) then read the question in

the following form: "That the Commons had made good their charge in respect to the tribute claimed and received from Cheyt Sing, the Raja of Benares, in 1778."

The Earl of Radnor said, he rose merely to suggest a few words by way of amendment, viz. after the word "that," to insert the words, "it be the question in Westminster Hall, that—"

The Earl of Caernarvon understood that it was on both sides agreed that any question put and decided upon in the Committee, was not to interfere with or affect the question or questions that were to be put ultimately in Westminster Hall; that ultimate question was to remain fully open to future free discussion.

Lord Thurlow declared that to have been precisely his meaning. His Lordship spoke of the importance of the proceedings, the respect due to the Commons, and thence inferred the propriety of subjecting the Charges and the evidence, in part and in the whole, to frequent solemn and deliberate discussion.

The Earl of Radnor said, he must still persist to move his amendment.

The question was then put, "That the words of the amendment stand part of the motion," when the Chairman declared the *Not-contents* had it.

The question was then put on the original motion, and the *Not-contents* carried it *nemine dissente*.

The Committee adjourned to

FRIDAY, MARCH 6.

The Lord Chancellor opened the discussion of the day by a display of all the facts relative to that part of the first Article of Charge which related to the conduct of Mr. Hastings, in respect to his having taken two lack of rupees as a personal present to himself from Cheyt Sing, in the year 1780, and in the same year demanded a tribute of five lack, together with the demand of the cavalry, and all the subsequent transactions, including the correspondence between Cheyt Sing and the Governor-General, the proceeding to arrest Cheyt Sing, and the consequences that followed. His Lordship compared the evidence with the facts, as he argued upon each, and declared he rested upon no fact which had not been either fully established by written or parole evidence, or admitted by Mr. Hastings himself in his Defence, delivered in by him to the House of Commons. He read the several letters

letters in question; treated fully of the negotiation with Mr. Hastings at Calcutta, carried on through the medium of the Raja's Buxey, in order to get the war subsidy remitted; and after having minutely detailed every circumstance of that part of the Benares Charge which referred to the before-mentioned events, and contending that collectively they clearly and undeniably conveyed much imputation of blame on the Governor-General, his Lordship adverted to two other material points, which must necessarily weigh considerably with their Lordships in preparing and making up their minds to the general judgment that would ultimately come to be considered, *viz.* the motives that influenced Mr. Hastings, and the principles of government on which he avowedly acted in the course of that which it had been his business that day to review.

A man's motives, his Lordship said, was the last matter for him to inquire into, or to decide upon, because in general they were inscrutable, being known only to himself and to the Almighty; but when a man, so far from attempting to conceal or dissemble his motives, assigned them himself, and declared openly that those were the motives on which he professed to act, and did actually proceed, it was impossible not to believe him, and not only fair and warrantable, but necessary, to consider and treat them as the motives of his conduct. Mr. Hastings had declared in his Defence given in to the Commons, and it appeared in various parts of the evidence referring to the particular subject under consideration, and to other Charges, that he acted from motives of personal resentment to Cheyt Sing, and meant to punish him for an affront to himself. With regard to the principles of government laid down by Mr. Hastings, it clearly was his principle to consider himself as an absolute sovereign, and to conceive that he had, as such, a right to exact from tributary and dependent Princes, all their grain, and all their revenues, in moments of danger and exigency to the existing Government of the country. This was, his Lordship thought, a most abominable principle of government, a principle that a British House of Parliament should never listen to with patience; and yet it was evident that Mr. Hastings not only acted upon it, but recommended it to Lord Macartney, as a principle to be exercised by the British government in Madras, and in every part of India, during a war with

Hyder Ally, or any powerful Prince in the country. Having expatiated on this point, and viewing the four several clauses in the light which he did, he conceived they amounted to that which the Commons had charged, a high crime and misdemeanour. He should therefore conclude by moving "That the Commons had made good the first Article relative to the subsidy of the demand of cavalry, and the injustice of Mr. Hastings, in falsely accusing Cheyt Sing of being culpable in the payment of his gifts, and the arrest, for the purpose of fining him forty or fifty lack of rupees."

Lord Thurlow said, he was sorry to find that the Noble and Learned Lord had departed from the rule which had been agreed on, to proceed with the parts of the Charges separately, and to come to a question upon each one after the other. The Noble and Learned Lord had blended under one question, various parts of the same Charge, amounting collectively to the most gross part of the Charge, and called for their Lordships decision upon it, which might tend to puzzle the Committee, and confound their judgments. He proceeded minutely to detail the different transactions of the subject selected by the Noble and Learned Lord, and to argue upon the manner and circumstances which characterized and stood connected with each individually. He explained the grounds of the offer of the two lack to Mr. Hastings as a personal present, which Mr. Hastings had refused in the first instance; he then stated the intervening circumstances that induced him to accept the two lack afterwards, his conduct thereupon, when he ordered it to be paid to Mr. Larkins, and directed Mr. Larkins to place it to the Company's account, and went next to the discussion of the demand, and taking of the five lack, which were claimed, and taken also in the year 1780. The claim of the war subsidy had been assented to by the Council, when stated to them by Mr. Hastings as a measure necessary to be adopted, and had been in consequence actually applied to the Ways and Means of the year in supply of the current services. He trusted the Learned Lord would on further consideration be induced not to depart from the line which had been adopted for their proceedings; and as he had conceived with the unanimous approbation of their Lordships. The Commons charged four acts of Mr. Hastings as four separate crimes—the demand of the war subsidy of 1780; the demand of Y 2 cavalry;

cavalry; the false accusation of Cheyt Sing, for unpunctuality in the payment of the kists; the correspondence with and arrest of Cheyt Sing. It was absolutely impossible therefore for their Lordships, if there was a difference of opinion amongst them, to put a single question on these four criminal allegations. He should therefore propose to put a separate question upon each. He could not however forbear to take some notice of the Learned Lord's allusion to a letter written by Mr. Hastings to Lord Macartney in July 1781, and introduced by the Managers in their reply, upon grounds totally different from those to which the Learned Lord applied the letter. He would state the circumstances which gave rise to the letter, then the substance of the letter itself, and he was confident that every Lord present would feel the conduct of Mr. Hastings to be completely justifiable, and highly laudable in every point of view. Their Lordships all recollected that in September 1780, Hyder Ally, after having cut off the flower of our army, over-ran the Carnatic with sixty thousand horse, and for many months after that unfortunate event, it was a point of extreme doubt whether we could preserve any footing on the coast of Coromandel, notwithstanding the great exertions of Mr. Hastings for its support. Under these circumstances the Governor who preceded Lord Macartney wrote to Mr. Hastings, that the Raja or Puligar of Tanjore had refused a supply of grain to our army, for which the President had written a letter to him expressive of his displeasure. Speaking of this transaction to Lord Macartney, who had succeeded to the government but the month before, Mr. Hastings expresses his astonishment that such language should be born at a season of such distress. He tells Lord Macartney, that while the State of which Tanjore is a subject, is in such extreme danger and distress, he conceives the Madras government has a right to demand from the Raja every aid which the country can afford; that while the service, in the present desperate condition of it, shall last, he would not leave the Raja a grain of rice in his granaries, or a rupee in his treasury, beyond what is necessary for his personal subsistence. Lord Thurlow thought there was not one of their Lordships but would applaud the good sense and the spirit of this letter, provided he considered the actual situation of our affairs in the Carnatic at the time the letter was written. Mr. Hastings, he said,

had been called a tyrant; he was so indeed, if it was a mark of tyranny to exert every nerve for the preservation of the empire committed to his charge, at a moment when every exertion was necessary to repel the danger which surrounded us. With regard to Mr. Hastings' principle of government as an absolute sovereign, it was no more than the adoption of what was laid down by that great writer Montesquieu, who said in so many words, "that the right of an absolute sovereign is every thing; the right of the people under him is nothing." His Lordship said he should conclude, and would hereafter move, "That the Commons had made good the first Article, so far as it related to the war subsidy of 1780."

The Earl of Coventry said, the demand of 1780 was precisely similar to the two demands of 1778 and 1779, on which the Commons had put separate questions. He also observed that the two lack presented to Mr. Hastings in 1780 were never considered by the Raja Cheyt Sing as in part payment of the five lack afterwards demanded.

The Earl of Caernarvon strenuously contended, that the motives of Mr. Hastings were avowedly those of resentment and personal malice. He referred to passages in the Defence of Mr. Hastings to prove this assertion. With regard to what Lord Thurlow had said of Montesquieu having laid it down, "that the right of an arbitrary Prince was every thing; the rights of the people nothing;" Montesquieu did not lay it down as a principle of government, but only observed, that the conduct of arbitrary governments had amounted to that, and had been such in effect. He reprobated Mr. Hastings' treatment of Cheyt Sing all through, and asked, what was to be said of a man, who himself declared he did not treat Cheyt Sing as a British Governor would have treated a dependent on a British government, but as Sujah Dowlah would have treated one of his dependents?—His Lordship expatiated on Mr. Hastings' taking the present, which, he contended, according to its amount, lessened the means of Cheyt Sing to pay the five lack subsequently demanded. Nor had Mr. Hastings treated those who were his dependents, politically considered, with that injustice only; he had treated his ally, the Nabob of Arcot, in the same manner, as was evident from his instructions to the President of Fort St. George.

Lord Thurlow said, across the table,
Lord

Lord Cornwallis had thought it right to pursue that line of conduct in a moment of similar emergency.

Lord Caernarvon in reply said, that by seizing the government and revenues of Arcot and Tanjore, Lord Cornwallis had committed a greater act of violence and oppression than any which Mr. Hastings was accused of having committed.

The Lord Chancellor said, he had no objection to withdraw his proposed motion for the purpose of substituting Lord Thurlow's in its place.

Lord Sydney said, he wished the facts criminally alleged to be kept distinctly in the consideration of their Lordships, but he confessed, he rose principally in defence of his Noble Friend (Lord Cornwallis); he trusted their Lordships would recollect that they were then determining upon the Impeachment of Mr. Hastings. Lord Cornwallis was not before them; and therefore he hoped from the candour of the Noble Earl, that he would offer some explanation of his expressions.—His Lordship added, he so fully concurred in sentiment with the Noble and Learned Lord (Thurlow), that he should have given a silent vote on his motion, if he had not been called up by what fell from the Noble Earl.

The Earl of Caernarvon said in reply, that it was far from his intention to throw any reflection upon the character and conduct of the Noble Marquis, of whose merits, talents, and virtues, no Noble Lord had a higher opinion than himself. He had no doubt but that the Noble Marquis would be able to assign very good reasons for having seized the revenues of the Carnatic and Tanjore during the war with Tippon, in violation of treaties recently made. All he spoke to was the circumstance as it appeared by the papers laid before their Lordships some years ago, but without any explanation from the Noble Marquis.

The question was then put on Lord Thurlow's motion, and negatived—the *Not-contents* being declared to have it.

MONDAY, MARCH 9.

Lord Thurlow rose to open the nature of the evidence in the Charge relative to the demand of cavalry from Cheyt Sing in November 1780.

The Charge, he said, stated, that with a further view to harass, oppress and ruin Cheyt Sing, Mr. Hastings did, in November 1780, move a Resolution, that

Cheyt Sing should furnish such cavalry as he could spare; that under colour of such resolution, he first peremptorily and arbitrarily demanded two thousand cavalry, then some lesser number, without offering to pay for them, though the Raja was not bound to keep up any cavalry, and though he was to be paid for whatever number he kept up.

His Lordship said, he would endeavour to state the evidence before the Court, which applied to this subject. In the first place, there was no engagement by which Cheyt Sing was obliged to keep up any cavalry at all, or by which the Company were bound to pay him for any cavalry, which they might at any time require from him. The simple question was this: Was Cheyt Sing, by the tenure under which he held, bound, in time of war, to furnish to the aid of his sovereign such cavalry as could be spared from the immediate wants of his Zemindary? On this point, his Lordship said, he could have no doubt. It was in proof that Sujah Dowlah, while he was his sovereign, had called upon him for a body of cavalry, which he did furnish, and it was absurd to suppose such an *imperium in imperio* to exist, as should preclude a sovereign from calling upon a subject for troops in times of war and exigency.

The next question then would be—Did such an emergency exist in November 1780, as justified the application to Cheyt Sing?

Here, his Lordship said, he should again have reason to lament the excessive carelessness with which the Agents employed by the House of Commons had drawn the Articles, and the little attention they had shewn to the evidence which had a reference to this particular point.

By taking all that appeared on the subject of the evidence for the prosecution, and on the Defence, their Lordships would see that in September 1780 Mr. Hastings and his Council received intelligence of a most alarming nature from Madras. Hyder had entered the Carnatic, had destroyed Colonel Baillie's army, and had driven Sir Hector Munro to the walls of Fort St. George. Sir Edward Hughes had informed Mr. Hastings also, of his having received undoubted intelligence that seven sail of the line, and eleven thousand land forces, had left France, and were intended to co-operate with our enemies in India. At this period also, thirty thousand Maratta horse were encamped on the western frontier of Bengal: An

invasion of Bahar by the Marattas was also expected: The Nizam professed hostility; Nuzeph Cawn threatened Oude; Madajee Scindia's forces, Corah and Allahabad; and General Goddard was opposed by the power of Poona in Guzerat. A more formidable league was never formed for the destruction of a single State at any period of time. Their Lordships, by a reference to the evidence, would observe the general dismay which prevailed in Calcutta at this momentous period. It was fortunate indeed that a man at that time presided in the public councils who possessed spirit, judgment, and decision: Not that he meant to throw any reflections upon the Gentlemen who differed from him in opinion; the season was so awful, that nothing was more natural than for men to entertain different sentiments, as to the best mode of averting such multiplied dangers. Mr. Hastings proposed various measures: That a very considerable body of troops should be sent to Madras, a very considerable supply of treasure, and that Sir Eyre Coote should be requested to take the command of an army, naturally dispirited by its heavy losses, on an idea perfectly well founded, that his presence would give spirits to all ranks upon the Coast.

To all these propositions, except to the motion respecting the Commander in Chief, Mr. Francis and Mr. Wheeler objected on the ground that Bengal was their first object, that the danger was at their door, and consequently that they could spare no troops, and but half the supply of treasure which Mr. Hastings had proposed to send to Madras. Sir Eyre Coote concurred with Mr. Hastings, and the casting vote of the Governor-General preferred India to Great Britain. At a second Consultation, on the 27th September 1780, Sir Eyre Coote gave in a plan for the defence of Bengal and Oude, which he had drawn out at the desire of the Board. Their Lordships would recollect that a considerable part of the Bengal army was then under orders to proceed to Madras: In the disposition therefore of the remaining force, it was necessary to form encampments where the attacks were most likely to be expected; and as an invasion of the province of Bahar was highly probable, Sir Eyre Coote proposed to station a large body of infantry in that province, together with two regiments of horse and one thousand, or as many of Cheyt Sing's cavalry as they could procure. This was the origin of the demand of cavalry from Cheyt Sing, and their

Lordships would determine with what propriety Mr. Hastings could be charged as the sole author of the measure.

Sir Eyre Coote, as appeared by the evidence, embarked for Madras in October, and on the 2d of November, in reading a letter from General Stibbert, relative to the want of cavalry on the northern frontier, the Board order an application for a supply, and at the same time Mr. Hastings is requested to write to Cheyt Sing for such cavalry as he could spare. It did not appear by the proceedings that the motion was made by Mr. Hastings.

Having brought the history of the cavalry, with all its concomitant circumstances, down to the period of the demand, he would now, his Lordship said, examine the conduct of Cheyt Sing on the occasion; and their Lordships would determine whether the defence which he made to the accusation of Mr. Hastings was so humble, so submissive, and so satisfactory as a Learned Lord had stated it to be; or whether it was, as Mr. Hastings had described it, offensive in style, and unsatisfactory in substance. The demand was sent from Calcutta on the 2d of November. On the 7th of December Mr. Fowke, the Resident, writes to Mr. Hastings, that he had repeatedly pressed the Raja on the subject of the cavalry, but could obtain no answer. His letter contains other complaints of the Raja's ill conduct. On the 13th of January 1781, Mr. Fowke writes that the Raja says, he has but thirteen hundred in his service, and that all except two hundred and fifty are absolutely necessary for the service of the collections. Their Lordships were possessed of the completest evidence to prove that both these assertions were false. Mr. Markham had distinctly sworn that he had above two thousand five hundred in his service; and the affidavit of Mahomed Myer, one of Cheyt Sing's commanders, fully confirmed Mr. Markham's evidence. His Lordship observed, that in all its parts the evidence of Mr. Markham was perfectly clear and distinct. Mr. Markham also swore, that a very small body of cavalry, one hundred, were amply sufficient for the service of the collections. Cheyt Sing asserts in his letter that Mr. Hastings made no reply to the information which he had sent him of the number of his cavalry. This assertion also was false; for Mr. Markham, who arrived at Benares the 1st of February, and consequently must have left Calcutta immediately after Mr. Hastings had received the Raja's letters, carried an order for him

like to supply fifteen hundred horse.

"Your Lordships, by referring to the evidence (said Lord Thurlow), will see that he afterwards reduced the demand to one thousand. You will see that, in point of fact, he never could procure a single horseman. It will be impossible to read the evidence of Mr. Markham, without observing that he pressed him with the anxiety and solicitude of a friend, even to make a show of obedience by mustering five hundred horse, but that he never could get him to muster a single horseman. Mr. Markham told him, that by his disobedience he would certainly incur the highest displeasure of Government: And upon one remarkable occasion, when he was sitting in a minaret at Ramnagur with Cheyt Sing, he told him on seeing a body of horse on the plains, 'If you will but send me those men, it will show your desire to obey your orders.' My Lords, Mr. Markham could not procure a single horseman from him."

His Lordship then proceeded to remark upon the letter of Mr. Hastings, and Cheyt Sing's reply to it.

Mr. Hastings says, that in the name of the Governor General and Council he required the Raja to furnish a body of horse to assist and act with the armies of the Company; that when Mr. Markham succeeded Mr. Fowke, he ordered him to repeat the demand, which he did with frequent, and almost daily importunity; limiting the demand to fifteen hundred, afterwards to one thousand. "To this demand (he adds) you returned evasive answers, nor to this hour have you contributed a single horseman."

The Raja in reply says, that when required to send a supply of horse, he sent Mr. Hastings a particular account of all in his service, amounting to one thousand three hundred, but received no answer. Mr. Markham delivered him an order for one thousand. He collected five hundred, and five hundred bukendasses, and told Mr. Markham they were ready to go wherever ordered. "No answer came from you (says Cheyt Sing), and I remained astonished at the cause of it. Repeatedly I asked Mr. Markham about an answer to my letter relative to the horse; he told me he did not know the reasons why no answer had been sent. I remained astonished."

Lord Thurlow commented upon every part of this answer, which he affirmed to be impudently false, and that the means of

detection were at hand. Mr. Markham contradicted it in every particular, as he has already explained.

His Lordship said, that as the demand of cavalry, as well as every other measure taken by Mr. Hastings towards Cheyt Sing from the date of 1778, was stated to be taken in order to ruin him, he would call to their Lordships recollection the very particular advice and orders given to Mr. Markham on his leaving Calcutta to proceed to Benares in January, 1781. He was desired to behave to Cheyt Sing on all occasions with kindness, mildness, and civility; and to avoid the conduct of his predecessor Mr. Graham, who Mr. Hastings thought had behaved harshly and rashly on some occasions to Cheyt Sing. Lord Thurlow desired they would bear this circumstance in mind, when they considered the very strong and pointed facts stated by Mr. Graham against Cheyt Sing, and that they would subtract as much as they pleased from the weight of that Gentleman's testimony, in consequence of the idea Mr. Hastings entertained of his being a prejudiced man. But no such objection could be made to Mr. Markham's evidence. He appears, on all occasions, to have followed the advice of Mr. Hastings, to have treated the Raja as a friend, and to have exerted himself all in his power to save him from that ruin which his folly and disaffection had brought upon him. "He will not allow me to be his friend (says Mr. Markham in a letter to Mr. Hastings). He is surrounded by bad advisers, who tell him of a French invasion, of the Marattas entering our provinces, and that he should not send us the cavalry until he sees what turn our affairs will take."—"Lock, my Lords (said Lord Thurlow), at the situation of Bengal at that moment. Prior to the agreement which secured the return of the Maratta army from an attack, everything hostile was to be expected. If Mr. Hastings had not purchased the retreat of that army for money in April 1781, it would undoubtedly have entered Bengal as an enemy in May. In that event, it is equally clear that Bimhaje Boosla would have entered Bahar at the head of a numerous army of horse. While matters remained in this uncertainty it was that Cheyt Sing acted in the manner already mentioned: and afterwards, on hearing from Calcutta that he was likely to be severely punished, he made an offer of twenty
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"lack, and then of twenty-two and a half lack, to buy off both the demand of cavalry and the war subsidy. But on receiving subsequent intelligence from Calcutta, he broke off the negotiation altogether; and that which Mr. Anderson calls an indirect offer, the Charge affirms to have been an offer which Mr. Hastings refused to accept."

Having argued this point most fully, and appealed to the evidence given on both sides in support of his arguments, his Lordship concluded by moving,—
 "That the Commons had made good the first Article in so far as it respected the demand of cavalry from Cheyt Sing."

The Earl of Caernarvon contended that the demand had been made with a view to its not being complied with, in order to lay the ground for the subsequent proceedings at that time projected and determined on by Mr. Hastings. In support of this, he said it was clear to his mind that Mr. Hastings had projected all the measures that he afterwards put in practice against Cheyt Sing long before he demanded any cavalry, and that the manner in which the demand was entered in the Minute of Consultation, *viz.* "for such part of the cavalry entertained in his service as he can spare," implied either that the Governor-General was conscious that he had no right to expect obedience from the Raja in this particular, or that he did not expect that the demand either could or would be complied with. The words of the Minute, "such part of the cavalry entertained in his service as he can spare," implied and admitted exercise of discretion in Cheyt Sing as to the number that he could furnish; and if he thought he could not spare any, he neither acted contumaciously, nor ought in candour to have been considered as having deserved punishment. If the Governor-General had a right to expect obedience respecting the cavalry, why did he not make this demand in a direct, absolute, and peremptory manner, instead of stating it in terms so insidious and deceitful? His Lordship differed entirely from the Noble and Learned Lord in his inferences and deductions on the subject.

The Lord Chancellor replied to several of the arguments of the Noble and Learned Lord who spoke first, particularly explaining the cause of the Minute of the Council of the 2d of November 1780, by stating that it originated with Sir Eyre Coote's prior recommendation, and that

its having been adopted on that day arose from a consciousness of its being an advisable measure. After stating various parts of the evidence, his Lordship said he could not help viewing the transaction, in all its circumstances, in a different light, and that he consequently drew very different conclusions from those stated by the Noble and Learned Lord.

The Lord Chancellor added, that he must take Mr. Hastings's account of his own actions in preference to any other evidence whatever. He had distinctly stated in his Defence before the House of Commons, that he moved the Resolution for calling upon the Raja for cavalry, and therefore such must be taken to be the fact.

Lord Thurlow in reply said, that it had been agreed to take each criminal accusation, on which a difference of opinion existed, separately. The clause relative to the cavalry was expressly stated to contain criminal matter. Mr. Hastings was accused of making a demand which he had no right to make, and to make it from malicious and revengeful motives, with a further view of harassing, oppressing, and ruining Cheyt Sing. In the case alluded to by the Learned Lord, trusting to the proceedings of the Council on the 2d of November 1780, he had said that the vote to call upon Cheyt Sing for cavalry did not appear to be passed on the motion of any particular Member. It was agreed now that the idea originated with Sir Eyre Coote. But on looking at the Defence of Mr. Hastings, he found that Gentleman said, "I moved in Council that Cheyt Sing be required to furnish such cavalry as he can spare; and this was done by the advice and recommendation of Sir Eyre Coote." His Lordship added, that he thought himself bound to inform the Court why this particular expression had slipped his memory. The fact was, that he had paid very little attention indeed to the Defence delivered by Mr. Hastings at the bar of the House of Commons. He knew it to be the rule of law, that a man was to be bound by his own defence, and that anything contained in it might be taken against himself. Their Lordships, however, had full evidence before them, that not a line of the Defence on the Bonares Charge was written by Mr. Hastings; and all the objectionable parts of it, which had been relied upon in order to shew malice, were actually inserted after Mr. Hastings had heard the other parts read once cursorily over.

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The circumstances under which Mr. Hastings delivered his Defence to the immense volume of Charges brought before the Commons, had been fully explained. He took to himself to answer what he conceived to be the most important part of the Charges, and the defence of the Benares Charge was entrusted to Mr. HALLED, a gentleman of splendid abilities and great information, but of too high a genius to attend minutely to the strict accuracy of his facts, and certainly better calculated to explain a prophecy, if Mr. Hastings had wanted him for such a purpose, than for a laborious investigation of the Company's records.

The Lord Chancellor, in reply to what had been said of the amount of Cheyt Sing's cavalry, declared that he could pay no attention to the affidavit of Mahomed Myer; and considering the circumstances under which they were taken, he did not think them entitled to credit.

Lord Thurlow said in reply, that the affidavits were evidence adduced not by the defendant, but by the prosecutors, who had not in any one instance endeavoured to destroy their credit; consequently, under every rule of law they must be received as full and complete evidence, as far as they went.

On the question being put, it was declared that the Not Contents had it, and this part of the Charge was consequently negatived.

The next matter Lord Thurlow spoke to, was the Charge of a conspiracy entered into by Mr. Hastings with the Vizier for the sale of Cheyt Sing's districts to the Vizier. This, his Lordship said, he need not dwell upon, as it rested solely on the evidence afforded by the letter of Mr. Anderson. After a few words therefore on that letter, his Lordship moved a question in the usual form on the subject of that part of the first Article; when, on putting it to the vote, the Chairman declared that the Not-Contents had it *nemine dissente*.

Lord Thurlow next rose to move a question on the next part of the Charge, which was, that in further prosecution of his malicious intentions, and with a view to harass, oppress, and ruin Cheyt Sing, Mr. Hastings, in January 1781, accused him of being in arrear in the payment of his kist, and particularly that part of it which was appropriated to the payment of Saadut Ally's pension: That the accusation was false, as he had paid up his kists with the utmost regularity; that it

PART VIII.

was made in peremptory and insulting language, and with a view to drive the Raja to some act of desperation.

His Lordship expressed his sincere concern, that a Charge so worded, without a shadow of evidence to support it, but with the fullest evidence to disprove it, should have been made in the name of the House of Commons. He again desired to be understood to impute no blame to them; they were not responsible for the infinite number of allegations that were to be found, in proof of which nothing had been offered; but he was astonished at the carelessness and want of attention of their Agents. Even in justice to them, however, he would say, that if they had seen one document, which had since been produced in evidence, the Charge could not have been preferred. The facts, as they now appeared in the evidence, were these:—Cheyt Sing was bound by his agreement to pay his kists month by month, either at Benares in cash, or by bills on Calcutta. If paid in cash at Benares, they were to be paid the day they were due; if by bills on Calcutta, those bills were to be made payable fifty-one days after each kist became due. So early as March 1776 complaints were made of his want of punctuality; and then, on a promise to Mr. Fowke, the Resident, that he would be more punctual in future, Mr. Fowke says, he has ventured to tell him that he shall not be *fin*ed for his past want of punctuality.

These complaints are renewed at different periods; but on the 17th of December 1780, Mr. Fowke writes expressly to Mr. Hastings, that the Raja had of late been very dilatory in the payment of his kists, and particularly that part of it which was appropriated to the payment of Saadut Ally's stipend. It appears then from this evidence, that not a doubt can remain of the perfect propriety of Mr. Hastings's conduct, in writing the letter which he did to Cheyt Sing, in consequence of a complaint from the public Resident, Mr. Fowke.

But if the defendant had not brought forward all this evidence, his Lordship contended, that the case, as it stood for the prosecution, proved the want of punctuality of Cheyt Sing, and consequently would have justified Mr. Hastings.

Their first document was an account or journal from the India House, transmitted from Bengal in April 1782, which proved that all the kists for 1780 and to May 1781 were paid; but when they

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were paid did not appear. The conclusion drawn by the Managers was, that they were paid month by month—a conclusion which they themselves overturned in the next page, where they produce two letters from Mr. Fowke, the first dated Benares, the 7th of December 1780, acknowledging the receipt of bills for the kist due on the 4th of November: the second, dated the 13th of January 1781, in which he acknowledges the receipt in cash at Benares, of the kist due on the 4th of December.—Consequently the Managers themselves prove, that in one instance there was a delay of one month and three days; in another, of one month and nine days.

The Managers observed to their Lordships, that they would prove by *oral testimony* afterwards, that it was the custom of the country to pay one month under another. Had they so done, said Lord Thurlow, then they would have made out their charge: but to do so was *impossible*. All the written evidence proved, and Mr. Markham by his oral testimony confirmed it, that Cheyt Sing was bound by his agreement to pay each month's kist as it became due. He paid his kists punctually, said Mr. Markham, when on the day it became due he gave the amount in cash to the Resident, or bills on Calcutta, payable fifty one days after date. He would not detain their Lordships longer with remarks on so groundless a Charge, a Charge that ought not to have been made at all, and which had been disproved even by the Managers themselves. His Lordship then moved, "That the Commons had made good the first Article, as it related to Cheyt Sing's want of punctuality in the payment of his kists in the year 1780."

The Lord Chancellor said, that however Noble Lords might differ on other parts of the Charge, they must be clear that this was fully made out. Whether the terms in which the Charge was couched were correct, he would not say, but it was clear that Mr. Hastings had accused Cheyt Sing of want of punctuality without any just cause; some, in fact, he paid within the period prescribed to him. He was allowed fifty-one days grace, and he paid for December 1780 and January 1781 in thirty-three and forty days after the kists became due.

Lord Thurlow said, he was really astonished at the mistake the Learned Lord had committed: he was afraid he was misled by the syllabus then before him. But if he would look at the evidence, he

would see that the want of punctuality of Cheyt Sing was completely proved. He would not go over the ground again; but though Cheyt Sing was not punctual, Mr. Hastings had been silent until the complaint of the public Resident induced him to write to the Raja.

The Lords called for the question, which was immediately put and negatived.

TUESDAY, MARCH 10.

Lord Thurlow called the consideration of the Committee to that clause of the first Article which contained the charge of having illegally delegated the powers of the Governor and Council to himself when Mr. Hastings went to Benares, and there ordered the arrest of the person of Cheyt Sing. His Lordship went over the arguments advanced on this Charge by the Managers of the House of Commons, and the evidence adduced in support of it, and contended that the full and sufficient answer to each would be found in the history of the government of the Company's possessions in India, ever since they held any sort of sovereignty in that country. His Lordship stated the several precedents to be met with in that history, which proved the practice to have been no novelty whatever, but on the contrary that it had been resorted to on various occasions, where the person entrusted with the highest office in the civil and military departments had left Calcutta, and gone into the interior or distant parts of the Company's settlements or dependencies for purposes of state policy or necessity. The precedents he cited were those of 1763 and 1765, when Mr. Vansittart and Lord Clive held the first office in the Company's service, and the recent instance of Lord Cornwallis in the course of the late war with Tippoo Saib. His Lordship adverted to the obvious necessity and advantage of a Governor-General having a right to delegate and assume to himself the powers of Government on great and emergent occasions, and said, he deemed the precedents he had quoted amounted to an ample justification of the conduct of Mr. Hastings, in delegating the powers of the Governor-General and Council, and vesting them in his own person, when he went to Benares; he therefore moved, "That the Commons had made good that clause of the Article which contained the charge against Mr. Hastings of having illegally" "delegated"

“delegated the powers of the Governor-General and Council when he went to “Benares.”

On the question being put, the Not-Content had it.

His Lordship next proceeded to what passed on Mr. Hastings's arrival at Benares, his arrest of Cheyt Sing, and all the consequences which followed; the part of the Article containing which, as set forth by the Commons, he admitted to be a grave, serious, and weighty charge. In order to understand it clearly, and to ascertain how far it was criminal on the part of Mr. Hastings, it would be necessary, he said, to examine all the facts and circumstances, and to consider the motives that led to each, and the effects they severally produced, calmly and impartially. But previous to his entering into a consideration of this important part of the subject, there were certain observations which he should trouble their Lordships with, and they appeared to be so very material as in his opinion to require their serious consideration. Their Lordships all recollected, that at the close of the year 1783, a Bill was brought into Parliament by Mr. Fox, whose name the Bill bore, which had for its object the assumption of the power of the East India Company by Commissioners to be appointed by Parliament. That Bill was ultimately rejected, and the succeeding Administration brought in another Bill, which left the management of their affairs in the hands of the East India Company, subject to the active controul of a Board, to whose situation responsibility was annexed. However different these Bills might have been in various particulars, yet in *one* they both *concurred*. It was assumed as a fact, that great oppressions had been practised in India upon *Rajas*, *Zemindars*, *Polygars*, &c. It did happen, and rather unfortunately, that the *fact of the existence of these oppressions* was supposed to be *so clear*, as to supersede the necessity of proof, and accordingly a clause, which in substance was originally inserted in Mr. Fox's Bill, was afterwards copied into the Bill of Mr. Pitt, and of course became a law. The clause to which he alluded was the 29th of the India Regulating Act of 1784, commonly known by the name of Mr. Pitt's India Bill. That clause, after affirming that complaints *have prevailed* that divers *Rajas*, *Zemindars*, *Polygars*, *Talookdars*, &c. within the British territories in India have been unjustly deprived of or compelled to abandon and relinquish

their several lands, &c. &c. enacts, that the principles of justice and the honour of this country require that such complaints should be forthwith inquired into, and fully investigated, and if founded in truth, effectually redressed. His Lordship observed that this clause appeared to him precisely to meet, and to be intended to meet, the case of Cheyt Sing. Indeed he knew no other person to whom it could apply. Let their Lordships consider for a moment how they stood. Not only was the law *positive* as to an *immediate investigation* of the justice of this person's expulsion, and of course he must presume the case had been fully inquired into by those who were bound by the law to make the inquiry, but the *stone of India* had been annually laid before the House of Commons for the last eight years; and a particular account was presented and printed of the various resources of the several Governments in India. Under the head of “Bengal Resources,” which amounted in the whole to five millions and a half sterling, one of the articles was, “*Benares Revenue*, four hundred and thirty thousand pounds.” That very revenue which the Commons have declared it criminal in Mr. Hastings to *create*, has been publicly received, and treated as a never-failing annual resource, as indeed it has hitherto turned out. If then, continued his Lordship, the same body which has impeached Mr. Hastings for this act of creating the revenue, has continued for twelve years to receive it; if the law positively enjoining the Company and the King's Ministers to restore Cheyt Sing if he were unjustly dispossessed, has been obeyed, as no doubt it had been; must it not appear most singular and extraordinary to their Lordships, that this Charge was preferred, and insisted upon to the last? The only use which he with their Lordships to make of the preceding remarks was, that it might induce them carefully to look at the nature of the accusation; and compare it with the proofs. Having troubled their Lordships so much on the preceding day on the subject of that part of the letter of Mr. Hastings to Cheyt Sing, and his answer relative to the cavalry; having proved by a reference to the evidence, not only that the letter itself was impudently false, but that Cheyt Sing must have been convinced that Mr. Hastings knew it to be false; he should now proceed to the other part of that letter, which a Noble and Learned Lord had declared not only to be humble and sub-

missive, but to contain also a full and satisfactory reply to the charges of Mr. Hastings.

His Lordship then proceeded to the first article of accusation in the clause, which was, that when Mr. Hastings arrived at Benares, he wrote a letter to Cheyt Sing, containing charges which were false, malicious, and wicked; and that Cheyt Sing's answer to those charges was a complete justification of his conduct. He would now proceed to examine the other charges, and the Raja's answers. Mr. Hastings tells him, that after having solemnly promised to pay the war subsidy of 1720, he had disappointed him, and that the disappointment was attended with very disagreeable consequences, and might eventually have occasioned the total loss of Colonel Camac's detachment. To this charge the Raja replies, that he obeyed the orders *with the utmost alacrity*—that he first paid one lack—then one lack and seventy thousand rupees—then wrote to require time, and receiving no answer, as it was no time for delay, he completed the payment of the remainder at certain dates which he specified. His Lordship said, that a reference to the evidence would convince their Lordships that this answer also was false in all its parts, and Cheyt Sing could not be ignorant that Mr. Hastings knew it to be false. As soon as he had paid one lack, which he did not do until the 5th of August 1780, though the demand was made in the latter end of June, he peremptorily refused to pay the Resident any further sum, until he got an answer to a letter he had written to Mr. Hastings, requiring further time to dispose of his effects. To this representation the Raja said he received no answer; though a reply was immediately sent, strongly expressive of the Board's displeasure at his excuses, which, they said, they knew to be futile. This displeasure of the Board had not the effect of procuring the payment, which was not finally made until the 18th of October 1780, although the Raja does not deny that he promised immediate payment in the month of July. It was clear, therefore, from the evidence, that to the two charges preferred by Mr. Hastings, the answers were of that nature as well to deserve the description given of them by Mr. Hastings: That they were unsatisfactory in substance, the evidence fully proves.

In the close of this letter, Mr. Hastings mentions the disordered state of the police throughout the Zemindary. Cheyt Sing

assures him in reply, that he paid the most attention to that important object. Their Lordships had a great mass of evidence before them, which proved the falsehood of this reply also. The defective state of the police had been a subject of very general complaint for years, and in no one instance did it appear that redress was afforded by Cheyt Sing. As to the style of the letter; the humble expressions it contained, the avowal that he was the slave of Mr. Hastings, amounted to just as much as an Englishman signing himself the most obedient and faithful servant of a man whom his letter offended, and was meant to offend, in every other line of it. It was not possible that Mr. Hastings, so many years resident in India, so well acquainted with the forms of correspondence, should have remarked on the offensive style of the letter in his address to the Board, unless the remark were well founded. As to its being palpably and grossly false in every particular, his Lordship had no hesitation in saying that it was so.

The next allegation was, that Mr. Hastings put the Raja under an arrest, as it is said, in another clause, for the purpose of extorting a fine of forty or fifty lacks of rupees from him. He would not advert to the circumstance of the intention never having been communicated to the Raja; but as this was stated to be the real and weighty accusation of the charge, he would examine it fairly and distinctly with the evidence.

First then, it was perfectly clear, from declarations anxiously made by Mr. Hastings himself, that when he left Calcutta in July 1781, he intended to levy a fine of forty or fifty lacks of rupees from the Raja. Left the world should doubt his having really formed such an intention so early, he called upon Mr. Wheeler, Mr. Anderson, and Major Palmer, to prove the communications which he made to them upon this subject before he left Calcutta. On his arrival at Boglepore, Mr. Markham met him, and he communicated his intention to him also. Mr. Markham observed, it was a very large sum, and that he believed the Raja's revenues had been over-rated in Calcutta. To this remark Mr. Hastings replied, "We will talk further on this subject at Benares;" meaning most obviously, that if the Raja's wealth and his revenues were less than Mr. Hastings had supposed them to be, he would take a smaller sum. Considering the wealth, which, as it was after-

afterwards proved, the Raja did possess, and the nature of his offences, his Lordship said, he had no hesitation in giving it as his opinion, that Mr. Hastings had not exceeded the bounds of moderation and justice, in fixing the amount of the fine at forty or fifty lacs. By so doing he would have punished a man notoriously disaffected, he would have deprived him of part of the means of resisting the authority of the sovereign State in future, and he would very materially have relieved the exigencies of the Company, which were at that time in the highest degree alarming. But if there were Noble Lords who thought the fine beyond the offence, still his Lordship said, unless some similar motives were imputed to Mr. Hastings as the ground of his proceedings, he could not conceive how it would be possible to impute criminality to him. As for himself, he was decidedly of opinion from the evidence, that Mr. Hastings would have been justified in depriving Cheyt Sing of his Zemindary altogether.

Having considered the circumstance of the arrest as connected with the intention of levying a fine (and in this, as in every other country, fines are a branch of public revenue), he would now proceed to the Charge which stated, that the arrest disgraced Cheyt Sing in the eyes of his subjects. There was full evidence to prove that it could have had no such effect.—That the act disgraced the English in the eyes of all Hindostan. It was fully proved in evidence that no such disgrace attached to us from this act.—That the Raja wrote letters of dispoynency and alarm, and that Mr. Hastings took little notice of them. It is in proof that he wrote to the Raja to let his mind at rest, and to be under no alarm or uneasiness.—It was next stated that a *sudden affray* rose in consequence of the outages offered to the Raja, and that the guard was destroyed by the fury of the populace. His Lordship said, that it appeared manifestly clear, from the evidence of Colonel Popham, Lieutenant Birrell, Mr. Markham, and a variety of affidavits, that the populace were entirely unconcerned on the occasion. He would state it the more particularly, because a Noble and Learned Lord (Loughborough) had, on a former day, called the business a sudden affray, suddenly provoked by the insolence of a Chudhar, called Cheyt Ram.

The circumstances were these, as appeared by all the evidence:—After Mr. Markham had put Cheyt Sing under an arrest, the orders which he left with the

commanding officer of the party were unfavourably disregarded, and several persons who had commanded bodies of troops which accompanied Cheyt Sing to Buxar, were admitted to his presence. The officer early saw the dangerous consequence of his imprudence, and discovered at the same time, that the two companies of sepoys which he commanded had no ammunition. Intelligence was sent of this neglect to Colonel Popham, and at the same time considerable bodies of men were observed crossing the river in boats from Ramnagar to Shewallah. With the company, therefore, that went with a supply of ammunition, a message was sent from Mr. Hastings, which, Mr. Markham says, they were obliged to make a verbal message, because the Dmbar was broken up, and there was no Moonstee to write a letter. The purport of this message was, that if a life were lost, Cheyt Sing should answer for it. Cheyt Ram, who was instructed to deliver this message, was an old man, near seventy years of age, who had always been employed both by Mr. Markham and his predecessor in delivering messages to Cheyt Sing, in the same manner as a man of similar degree was employed in carrying messages from Cheyt Sing to Mr. Markham. Noble Lords would observe, that the message was couched in terms of menace—and necessarily so couched, for it was intended by that message, not to provoke the tumult, but, if possible, to prevent it, by exciting Cheyt Sing's apprehensions for his own fate. This man accompanied the party that Lieutenant Birrell commanded, and being known, was permitted to pass on to the presence of the Raja, where he delivered his message, as some affidavits say, passionately and violently; and it was very natural for the men who made those affidavits to conceive so, even though the Chudhar had merely delivered the message precisely as it was given to him. But whether he delivered it as the affidavits state it, or whether, as Mr. Markham thinks, he did not step beyond the commission that was entrusted to him, it is proved beyond all possibility of doubt, unless the Court conceive all the witnesses to have been perjured, that the attack began from the Raja's troops *without*, before Cheyt Ram had delivered the message *within*. Lieutenant Birrell distinctly swears, that after his company appeared in front of Shewallah, they were instantly fired upon, and several were killed and wounded by the first discharge. This was the signal for the slaughter within.

The just conclusion then from all the evidence was this, that as soon as Mr. Markham had quitted the Raja, and his several commanders were imprudently admitted to his presence, measures were taken for his rescue. Four thousand regular forces were collected in a short time, and the rescue was effected. His Lordship advised Noble Lords would attend to the next step taken by Cheyt Sing. Messengers were sent to Fyzabad, as appeared by Mr. Markham's evidence, to tell the Begums what had happened: this was on the 16th, and by the 21st of August large bodies of troops were in motion in the road from Fyzabad; a circumstance which, among many others, proved a previous concert between Cheyt Sing and the Begum.

It was clear therefore, Lord Thurlow said, that the rescue was not occasioned by the message delivered by Cheyt Sing; that it was not the consequence of a sudden affray; that the populace were ignorant of all that was passing, since it is proved that no one inhabitant of Benares was a party to the affair.

The next question to consider was, Whether the arrest was in itself so disgraceful as to drive the Raja to resistance, rather than submit to such an indignity? Here, his Lordship said, they had the evidence of every Gentleman examined to prove that it was no more an indignity to him, than it would be to any other person. It was in proof that arrests were common throughout the country, and the only mode of proceeding. In 1772 Mahomed Reza Cawn, the Nab of Bengal, was arrested, and brought down a prisoner to Calcutta, by orders from the Court of Directors. In 1789 the Raja of Burdwan, a man infinitely higher in rank than Cheyt Sing, was fined five thousand rupees by Lord Cornwallis, for not obeying orders relative to the transmission of some revenue papers to Calcutta; and on a delay in payment, he was ordered to be arrested, and if he did not pay the money in twenty-four hours, to be sent a prisoner to Calcutta. It was clear, therefore, that unless Cheyt Sing had conceived himself ripe for resistance, he would have submitted to the arrest, and by that means have prevented all the consequences which he personally suffered by his disobedience.

As to the remaining part of

this allegation, he should not go particularly into it, until he heard the sentiments of other Noble Lords. Mr. Hastings was charged with infirmity, in refusing, after the Raja was in open rebellion, to listen to his proposals of accommodation. He presumed, until he heard the contrary, that no Noble Lord would think Mr. Hastings could have listened to overtures, which all the testimony plainly evinced were made with an intent to lull Mr. Hastings into temporary security. To treat with him, appeared to his Lordship to be impossible, and that was the general opinion. Mr. Hastings had wisely corrected in the new arrangements, the mistakes of the former. He raised the Company's rent to forty lacks of rupees—a sum which the country could well afford to pay, because it had paid it from the year 1782 to this day. He would not allow the new Raja to retain forts nor a military force; and what Mr. Hastings left imperfect, Lord Cornwallis very wisely made completely perfect, by placing the Raja on the footing of every Bengal Zemindar, and committing the entire government of the country to the English Resident.

His Lordship said, that in the settlement made with Cheyt Sing in 1775, there appeared to him to be a radical defect. The Raja was placed so near to independence, that the moment he conceived independence to be within his grasp, he naturally attempted to attain it. On reading the minutes of that day, Mr. Barwell appeared to him to see the matter in its true point of view: He would either have made the Raja completely independent, or have placed him entirely under the controul of the British Government.

His Lordship said, though he was not aware that he had omitted to state any material point; yet he would rely on their Lordships' indulgence for permission to intrude upon them again if necessary; and would now content himself with moving, "That the Com-mons had made good the first Article, in so far as it related to Mr. Hastings' preferring false and malicious charges against Cheyt Sing, and arresting his person."

The Earl of Caernarvon said, that if he had formed an erroneous judgment, he anxiously wished to change his opinion; but nothing that he had yet heard had induced him to alter it; nor had

had any of the many observations which the Noble and Learned Lord had made, taken off the impression which the facts stated in the Charge had made on his mind. It had not been proved, to his conviction at least, that the delegation of the powers of the Governor-General and Council to himself, alleged in the former part of the Charge, was legal; or, admitting for a moment that it was a legal delegation, it had not been proved that the delegation had been made for any such use and purpose as the Defendant made of it by arresting Cheyt Sing, and treating him with all the indignity and rigour that he had compelled him to endure. The Noble and Learned Lord had stated various precedents of delegation of the powers of the Chief in office in India, and his Council to that Chief, but he utterly denied that there was the smallest analogy in any one of those precedents to the case in question. In the cases cited by the Noble Lord of the delegation of the powers of the British Government in India to the Chief in office, they were every one of them delegations of power for the express purpose of enabling the Chief to perform a single, stated, and important act, with a view to the attainment of some one great and specific object. Taking it for granted, therefore, that the delegation of the powers to Mr. Hastings was legally made, let their Lordships look to the minute of the Board, entered on the Consultations, to see for what express purpose it had been made. The minute stated, that the Governor-General was invested with "full power and authority to *form such arrangements* with the Raja of Benares, for the better government and management of his Zemindary, and to perform such acts for the improvement of the intercist which the Company possesses in it, as he shall think fit and consonant to the mutual engagements subsisting between the Company and the Raja." His Lordship reasoned pointedly upon the terms of expression, and on the reasonable inference resulting from the whole of the minute. The word *arrangements*, he contended, plainly implied that the Governor was to arrange such acts as he should think consonant to the mutual engagement subsisting between the Company and the Raja, in an amicable way, and not to deal with him in the harsh and hostile manner which Mr. Hastings had taken upon

himself to adopt. Having discussed this very fully, the Earl said, with regard to the other facts alleged as crimes and misdemeanors, whatever inconsistency there might be in the Commons having preferred the Charge while they enjoyed the benefits arising from the acts of Mr. Hastings, he was not now to consider. An accusation stated to be criminal was preferred by a body competent to prefer it; and it was his duty, as a judge, to consider whether the Charge was proved or not, and to consider that only. He still thought that Mr. Hastings was actuated by motives of revenge in writing the letter that he did write to Cheyt Sing, and also in putting him under an arrest. He again referred to the Defence of Mr. Hastings, where that Gentleman said, that while he thought Cheyt Sing had him and not the Company for his object, a fine of forty or fifty lacks would, he conceived, be a sufficient punishment for his offence. He entered into a long argument as to the legality of the delegation, and said, that at all events Mr. Hastings was not empowered by that delegation to arrest the person of Cheyt Sing, for the purpose of exacting from him a fine of forty or fifty lacks.

Lord Thurlow in reply said, that, after having so fully explained to their Lordships that the passage quoted by the Noble Lord was neither written by Mr. Hastings, nor even seen by him, until he heard it read in the House of Commons, he did not expect that any stress would be laid upon it. He wished, however, as the Noble Lord did profess to quote it, he would quote it as it really stood. The passage did not run as the Noble Lord had stated, but in the following words:—"So long as I conceived Cheyt Sing's misconduct and contumacy to have *me* rather than the Company for its object, or at least to be merely the effect of pernicious advice, or misguided folly, without any formal design of openly resisting our authority, or disclaiming our sovereignty, I looked upon a considerable fine as sufficient both for his immediate punishment, and for binding him to future good behaviour." Lord Thurlow said, he was sure that the Noble Lord would have the candour and the justice to say, that this passage was very different indeed from his Lordship's statement of it.

Lord Caernarvon admitted, that there was a difference, which in the hurry of speaking he had certainly omitted to state.

The Earl of Mansfield said, he wished that the present question had been divided into two subjects of discussion, to avoid the dilemma of determining on the guilt or innocence of a person who had obtained great advantages, which the Public had appropriated to itself, while they prosecuted the person for the act of procuring these advantages for them. In almost every point he agreed most completely with the Noble and Learned Lord who, with so much ability, and so much to his own honour, had fully investigated the present Charge. On a single point he had a doubt, though he confessed it was but a doubt; yet, standing as he did in the awful, and he would add, to him, the tremendous character of a judge, he deemed it his duty to state his feelings to their Lordships, and in a few words, considering the lateness of the hour, as he possibly could. He fully concurred with the Noble and Learned Lord in opinion, that the right of the British Government to demand military aid of Cheyt Sing, in war, was proved beyond a possibility of question. Indeed he was astonished that men of such talents as those who managed the impeachment, could have entertained a doubt upon the subject. He was equally convinced, that there was not the slightest reason to doubt the right of the British Government to demand the assistance of a body of cavalry from Cheyt Sing; and there was not any thing like a suspicion that could arise, he conceived, in the mind of any man, that in making and enforcing these demands, Mr. Hastings was actuated by malicious motives. Equally convinced was he that the conduct of Cheyt Sing was highly contumacious and refractory, and that it deserved punishment. "God forbid!" said his Lordship, "that I should lay the slightest stress upon any expressions in a Defence, which, if it is fully proved, Mr. Hastings never wrote, and the objectionable parts of which he never saw; however imprudent I may conceive Mr. Hastings to have been in presenting such a Defence at the bar of the House of Commons. As to the arrest of Cheyt Sing, as a judge, I can see nothing criminal in the act; though, as a statesman, I think it was rash, precipitate, and

unwise, under all the circumstances of the case. Coupling the arrest with the purpose intended by it, namely, taking from him forty or fifty lacks of rupees, I much doubt whether the fine was not so heavy as to be deemed excessive. But when I consider that Mr. Hastings acted, as in my conscience I believe he did, from the purest motives—when, after the most careful and attentive examination of the evidence, I can find nothing that induces me to believe he was actuated by a corrupt or malicious motive—when I consider the alarming state of India at that momentous period, surrounded as Mr. Hastings was by enemies, and in hourly expectation of the arrival of a powerful armament from France—when I reflect that, under Providence, he was the happy instrument of preserving that valuable empire to Great Britain, and that every measure he took had no other object than the preservation of the empire, I cannot bring myself to think that the mere mistake in the amount of the fine which ought to have been levied upon Cheyt Sing, is an act of criminality; and the more especially as Mr. Hastings did not convert the money to his own use, but applied it to the pressing exigencies of the service of the British Government in India." An additional reason for his wishing that the arrest had been separated from the consideration of all that passed after the rebellion of the Raja, his Lordship said, was because Mr. Hastings was clearly justified in the whole of his subsequent conduct by every principle of policy and prudence. In order to determine how far Mr. Hastings was warranted in dealing with Cheyt Sing as he conceived Sujah Dowlah would have dealt with him under the same circumstances, or as any other absolute Prince would have dealt with his dependent, as in the case of the failure of obedience due from a vassal to his liege Lord in feudal times; it was necessary, in the one instance, to examine and to ascertain what the principles of the feudal system were; and in the other, what were the known principles of the system of government practised under the absolute Princes of India; before their Lordships took upon them to decide, whether the punishment inflicted on Cheyt Sing was warranted by his disobedience and contumacy.

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The history of India, his Lordship said, as far as he had made himself master of it, afforded abundant proof that fine and confinement were the usual modes of punishment adopted by the absolute Princes of that part of Asia, when their dependents had been guilty of disobedience and contumacy. The Earl said, to his surprise, it had been much insisted on in Westminster Hall, that Cheyt Sing was an independent sovereign Prince, or Lord; whereas it was clear beyond all question, that he was to all intents and purposes a dependent, first on Sujah Dowlah, and afterwards on the British Government in India, and consequently responsible to Mr. Hastings, in his character of Governor-General, for the whole of his conduct. "On these considerations," therefore, and those I have before stated," said his Lordship, "I shall certainly concur with the Noble and Learned Lord in voting, that the Commons have not made good this part of the First Article."

The Lord Chancellor said he would not go over the facts that constituted the Charge again, having so fully done that last week; he would only make a few observations relative to the feelings which, speaking as a judge, impressed his mind on the occasion. He said, it was a known principle of English law, that every offender under the British government ought to have his punishment measured *ad modum delicti*, and that the idea that a British Governor, amenable to the sovereignty of Great Britain, was justified in acting as an absolute and despotic sovereign Prince, was not to be tolerated. Mr. Hastings had no authority to act as a despotic sovereign, and it was evident from his own words, that he did not proceed to punish Cheyt Sing *ad modum delicti*, but *sub modo* Sujah Dowlah. He would not allow the instance of the obedience of a vassal to his liege Lord in feudal times to be quite parallel and strictly in point, and he conceived that if the motives of Mr. Hastings were to govern their Lordships, they were to look to Mr. Hastings's own avowal of the nature of his motives and principles.

The Marquis of Lansdowne said, much praise was due to their Lordships for the calm, deliberate, and grave manner in which they had taken up the business, and proceeded to go through the Charges. Such conduct, in his mind, did the House the highest honour.

PART VIII.

He ridiculed the pretensions to rank, respect, and royalty set up for Cheyt Sing. Having heard so much of his importance, he had been at some trouble to ascertain who that great man was, and in consequence of his researches he was enabled to declare, that Cheyt Sing had no line of ancestry to be proud of, no honourable lineage to boast: his grandfather was an adventurer of some parts, who made his way by dint of ability and intrigue, as most adventurers do, and by those means he got possession of Benares, and ousted the former holder of the districts and revenues belonging to it; his son, Bulwant Sing, who succeeded him, but had not equal parts (for it does not always happen that a son inherits his father's sense and talents), was another intriguer; and his grandson, Cheyt Sing, a third intriguer. Each threw off the rightful sovereign, and the last would have intrigued for that purpose, probably with the East India Company, and to the same effect, if Mr. Hastings had not prudently checked his ambition. When he heard the abuse that had been thrown on Mr. Hastings, and saw him, like Sir Walter Raleigh, compared to a "Spider of Hell," he was anxious to know the extent of his conduct, under all the circumstances of the time that he was Governor-General of India, and particularly what the authority and powers were under which he acted. With this latter view he had inquired for Mr. Hastings's commission, and was astonished when he found it to be so extremely short and comprehensive. Seeing that, he asked for his instructions, for every one of their Lordships who had been in office, well knew that when a new Governor was sent out to any of his Majesty's American Colonies, or British dependencies abroad, it was not only usual to give him a long commission describing his powers, but to accompany it with a set of instructions, in order to provide, as much as possible, for the objects in contemplation of his Majesty's Ministers at the time. Was that the case with Mr. Hastings? Nothing like it. He held his commission in his hand, the Marquis said, and he would read it to their Lordships: It was but short. The purport of it was, "that the Directors of the East India Company appointed Warren Hastings, Esq. Governor-General of all their possessions in India, and invested him with the whole

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"whole government civil and military." With respect to instructions, Mr. Hastings did not carry out a single line. His commission was his sole authority; and would any man, after hearing what he had just stated, venture to assert, that Mr. Hastings, as Governor-General of India, was not to be considered as an absolute Sovereign Prince in India? He was so to all intents and purposes, and it would have been absurd to have expected any good to have resulted from his government, if he were viewed in any other light.

The Marquis instanced the services of Lord Cornwallis, and said, great and important as those services were, the Noble Lord could not have achieved them, if he had not been allowed to exert absolute power. He was aware that he possessed, and he had exercised it in various instances much to his own honour, and the advantage of the Company and the British interests in India. On the other hand, he thought, what Mr. Hastings perhaps would not be pleased to hear, that he did not stand intitled to have his conduct tried by the principles of English justice. If it had been practicable, he ought to have had Mahomedan judges and a Mahomedan jury. It was not possible that British judges and British jurors could be competent to decide on conduct arising out of circumstances so new to British ears, so irreconcilable to British customs. The genius of the Government being free and liberal, all practices under it were necessarily governed by the same principles of freedom and liberality. Not so the conduct of arbitrary Sovereigns; the minds of their subjects being familiar with the sight of unlimited power in daily exercise, they complained not of injustice, and suffered without a murmur, when they were conscious they only suffered one day, what might be the lot of their neighbours the next. From this view of despotism, and the conduct of despotic Princes, the Marquis said, he considered it as downright nonsense to talk of applying the precepts of the Christian religion, and the principles of English government, to subjects accustomed to live under Mahomedan laws, Mahomedan customs, and the system of oppression practised under the government of absolute Princes.

The great, and indeed only questions in the case of Mr. Hastings ought to be these:—Had he governed India to the satisfaction of the people? and had he

improved the interest which his native country had in those distant possessions? These would have been the only questions which the late King of Prussia, the greatest and wisest Man of the age, would have asked Mr. Hastings, if he had possessed so rich a dominion and so meritorious a servant. That able statesman and profound politician would have dealt with a person holding and exercising a distant government of great importance and authority in this way. He would have looked to the general result of his Governor's conduct. He would have said, "I sent you to rule over an extensive territory, peopled with thirty millions of subjects. I entrusted you with five millions of revenue for the support of your government, and I gave you unlimited powers. Have you abused those powers? Have you embezzled the revenues entrusted to your management? Have you injured the subjects put under your protection? or have you diminished the extent of my territories?" Had such questions been put to Mr. Hastings, what would have been the answer?

The answer their Lordships well knew, because it was the language of truth:—"I came to the government when its resources scarcely exceeded three millions a year—when I left it, they were increased to five millions five hundred thousand pounds a year. I enlarged your dominions, and I left the people happy and contented, and pleased with my conduct." The King of Prussia, satisfied with such an answer, would have enquired no further. He would not have descended to inquire into the minutia of his government, or laboriously employed himself in tracing out every peccadillo and mistake arising from error of judgment. He would not have been trying his Governor for years together after his return home, in order to discover some pitiful drawback from services the most meritorious and useful to his country; he would have acknowledged that Mr. Hastings had made a beneficial use of the absolute power lodged in his hands. The Marquis trusted, that no person would construe what he had said, as intending to cast a reflection on the House of Commons for preferring the accusation. Their motives were perfectly pure, he was convinced. He concluded by declaring, that he should not finally vote, yet he had examined the Charge with the closest attention; he was satisfied, that instead

of maliciously persecuting and eagerly oppressing Cheyt Sing, Mr. Hastings had manifested patience and forbearance even to a blameable degree, and was convinced in his conscience that Mr. Hastings ought to be acquitted of every part of the Charge.

The Bishop of Rochester said, when he considered the accusation preferred against Mr. Hastings, he could not, consistently with what he thought due to the character in which he sat in the House, content himself by giving a silent vote; and especially as, after the fullest examination of it, he should vote for the entire acquittal of Mr. Hastings. His Lordship said, he could not agree with the Noble Marquis that it was of any consequence to the merits of the cause, whether Cheyt Sing could boast of a long line of ancestry or not. Be he of ever so obscure origin, he was entitled to justice as an individual, as much as any other man standing in the same relation to the British Government in India. Neither could he concur with the Noble Marquis's idea, that Mr. Hastings ought to be tried by Mahomedan judges and a Mahomedan jury. A British subject was intitled by British laws to be tried by a British jury and British judges, acting upon the principles of justice, recognized and established under the British constitution. Mr. Hastings had been tried by the highest Court in the kingdom; and he had no doubt but the Court would continue to proceed with that temper, impartiality, and fairness, which had on all occasions so eminently distinguished its character.

The Bishop proceeded to a very minute and accurate examination of the facts alledged in the Charge as crimes. He began this head of his speech with observing upon the tenure under which Cheyt Sing held his Zemindary, and the duties that were imposed upon him. He proved, by a reference to the evidence, that he had violated all the conditions of his tenure, and said it was clearly made out, that he had invariably shewn himself a disloyal and disaffected subject—that he had actually forfeited his Zemindary—and that, in point of fact, if Mr. Hastings were censurable at all, it was for a foolish partiality to Cheyt Sing, which led him to pay too little attention to the complaints which for a series of years had been made to him against Cheyt Sing. It was not possible, he said, to impute a criminal intention to Mr. Hastings; and thinking, as his Lord-

ship said he did, that the Zemindary was forfeited, it was impossible for him to condemn that Gentleman for intending to impose a heavy fine upon him for his manifold delinquencies.

He concluded by declaring that he should vote against the motion.

The question being then put, the *Not-contents* were declared to have it.

FRIDAY, MARCH 13.

Lord Thurlow rose to open the next article of the allegation in the Benares Article, which was, that after the expulsion of Cheyt Sing, Mr. Hastings caused the castle of Bidjygar, the residence of Pauna, to be besieged, though she and the women had no concern in the supposed rebellion; that he never inquired whether the treasures contained in Bidjygar were the property of the women or Cheyt Sing; that he stimulated the army to rapine and outrage, by the wicked orders he issued; and that the women were ultimately plundered in consequence of those orders.

His Lordship said, he would not stop to notice the strange mode in which the Article was worded; the blunder of calling the strongest fortresses in Indostan after Gualior, a Castle; and the assertion of its being the residence of Pauna and her attendants: Their Lordships all knew that it was, in fact, the strong hold of Cheyt Sing, the place where he kept all his treasures. They knew that until that fortress was captured, the war could not be said to be at an end. It was in evidence that Cheyt Sing retired with his women from Pateeta to Bidjygar, and, unwilling to risk a siege himself, had quitted the fortress, carrying with him as much of his treasure as he could convey away, and leaving only what he could not carry off, with a garrison of seven hundred men, his mother, and many of the women of his family. It was in evidence also, that as soon as Mr. Hastings heard of his flight, and that he had left his women in the fort, he earnestly recommended to Major Popham to treat Pauna, the mother of Cheyt Sing, with the utmost tenderness and attention, to which, Mr. Hastings observes, she was intitled by her sex, her rank, and the station she had filled, and still more by her misfortunes.

The question for their Lordships consideration would be, Whether any circumstance in the subsequent letters of Mr. Hastings recommended, authorised, or ordered a different mode of

proceeding to this Lady? The evidence adduced he would endeavour to state with correctness.

After the siege of Bidjygur had continued almost a month, the evidence begins by a private letter from Mr. Hastings to Major Popham, in answer to one from the Major to him, which does not appear. By the answer it is clear, however, that the Runnee had made a proposal to retire from the fort on conditions which Mr. Hastings thought unreasonable, and in a mode by which she might contrive to defraud the captors of a considerable part of the booty or reward to which he thought they were so well entitled. Mr. Hastings in a letter dated October 22, 1781, says, he can make no objection; that Major Popham must be the best judge; and that he will certainly ratify any thing that Major Popham has engaged for: but he positively declares that he never will allow her to hold any land or any authority in the Zemindary, without being subject to the authority of the Zemindar.

In a second letter, dated the 3d of November, Mr. Hastings expresses his readiness to comply with all the conditions on which Pauna had agreed to surrender the fort; that is, she had preferred certain conditions herself, to which Mr. Hastings fully consents; but adds, that if, after he has consented to her own proposals, she does not give up the fort in twenty-four hours, he shall consider her refusal as a wanton affront; that he will then grant her no conditions, but leave her exposed to those dangers which she chuses to risk, rather than trust to the generosity and clemency of the English Government. "If she complies," says Mr. Hastings to Major Popham, "it will be your part to secure the fort and the property it contains for the benefit of yourself and detachment."

Lord Thurlow said, that he believed there was not one syllable in these letters, which was intended to produce, or which could possibly produce, the effect stated in the Article. It was impossible that these private letters to Major Popham could have stimulated the army to rapine and outrage, for the contents of them never were communicated to the army: The first contained an opinion, that the officers and soldiers composing the besieging army were entitled to the treasures which were in Bidjygur; the latter repeated the same

opinion. It was also impossible, that when the fort was surrendered, Pauna, her relations, and dependants, should have been plundered in consequence of the spirit of rapacity excited by the orders of Mr. Hastings, because it was proved in evidence, by Major Popham, that the accident happened owing to an outpost not having been withdrawn agreeably to his orders.

Mr. Hastings is next accused of endeavouring by various artifices to retract his own permission to the army to share the plunder, and to recover the spoil which they had divided.—Failing in that, he attempted to obtain it as a loan; of which being also disappointed, he was altogether frustrated as to the attainment of the object of his journey to Benares. His Lordship said, he was entirely at a loss how to treat this part of the Charge as a crime; but as there certainly appeared to be something exceedingly unbecoming a great character in such a mode of proceeding, he thought it but right to lay the whole evidence before their Lordships for their consideration.

Bidjygur surrendered on the 10th, after a breach was made, which the springing of a mine would very soon have rendered practicable. Immediate notice was sent to Mr. Hastings of the surrender. It does not appear that any letter was written to Mr. Hastings on the 11th; on the 12th Major Popham wrote a letter to Mr. Hastings, but without any intimation of the division of the plunder. Captain Calcraft, an Aide-Camp of Major Popham, was deputed to Mr. Hastings, and confessed to him that the division of the plunder had been made. That gentleman told their Lordships what passed between him and Mr. Hastings; the displeasure expressed by Mr. Hastings at the division having been made so suddenly, and without authority; his positive denial that the letters to Major Popham were meant to be or could be construed as an order: but it does not appear that Mr. Hastings ever entertained the notion of retracting his opinion, which uniformly was, that the officers had a right to the booty, and that he would exert himself to obtain it for them legally and securely. The officers themselves (continued his Lordship) do not quote the two letters in question as orders, after they came to the knowledge of them. They say, that the opinion of Mr. Hastings, so fully corresponding with their own, induced them

them to make an immediate division. Mr. Hastings in his answer explains himself most clearly: He says, that even if the amount had been uncommonly great, he should have hoped the Company might have had the immediate benefit of it, in their pressing exigencies, the property being secured by bonds to the captors; if a moderate sum, he would himself have authorized the distribution; and had he in any event thought it right to apply to the Board, he would himself have advised the gift. Mr. Hastings adds, that if Major Popham conceived his private letters to contain the sanction which he attributes to them, he is sorry that he did not avail himself of his entire knowledge of Mr. Hastings's private sentiments. He desires Major Popham to send him copies of all those letters, and particularly one of the 10th of November, written by Major Palmer, his secretary, which comprizes his opinions and wishes in the fullest and most positive terms. Though Major (now Colonel) Popham was cross-examined at considerable length by the Managers, yet it is very singular that they never did ask him any questions relative to this very particular letter of Mr. Hastings. The Managers had the power, if they chose to use it, of removing every doubt from the subject: As the evidence stood, it was most clear, that at every period Mr. Hastings contended for the right of the army to the Bidjygar prize-money; but denied that they were authorized by him to seize their right, without first applying to him; and it is equally clear that the officers do not state the letters, which are called *orders* in the Charge, higher than *opinions*, which entirely coincided with their own.

From this review of the evidence, their Lordships would determine whether Mr. Hastings had acted that shabby part which the Managers imputed to him. He thought it no more than justice to a man who had filled so elevated a rank in life, to state the facts fairly, though in truth what the Managers had charged did not amount to a crime.

It was next alleged against Mr. Hastings, that he acted against his own declared and recorded opinions, which were, that the very idea of prize-money was destruction to the army, and ought to be avoided like poison. Their Lordships would find this also a charge not amounting to a crime; but it would be fair to state to them what appeared in

the evidence; and what carried conviction to his mind, that the case in which Mr. Hastings used the expression alluded to, was so exceedingly different from that of Bidjygar, as to make it impossible to charge him with inconsistency.

It was an historical fact, that when Cossim Ally Cawn was driven out of Bengal by the British army in 1763, they were acting as auxiliaries to Meer Jaffer, who was exceedingly liberal in his promises to the British troops, assuring them, and using most unfortunately a figurative expression, after the manner of the Orientalists, that when they had totally defeated and expelled Cossim, he would fill the cartouch-box of every Sepoy with rupees. This promise never was performed; and the army was, in consequence of the non-performance, in a most dangerous state of mutiny for seven months, until, by very spirited exertions, the evil was quelled.

In the year 1774, the British army was acting as auxiliaries to Sujah Dowlah, in the Rohilla war. The Rohillas were defeated in a general action on the 23d of April; the battle was entirely gained by the English, who marched in pursuit through the enemy's camp, which was plundered by a body of Sujah Dowlah's horse that had not been in the engagement. This naturally occasioned some ill-humour in the army, and in the progress of the campaign some of the officers claimed a right to take what should be found in Poclabeet, an open defenceless town. On an application on the subject from the Commander in Chief to Mr. Hastings, that Gentleman gives the orders which are quoted in evidence by the Managers as contradicting, which they certainly do not in the smallest degree, the sentiments that Mr. Hastings held in 1781. The substance is, that the British army was acting as a stipendiary army, in a service by which the State of Bengal was to receive considerable benefit; that under no circumstances could they be intitled to plunder, except in a fortress or camp taken by storm; that Sujah Dowlah's reasoning was unanswerable. How could he discharge his engagements with the Company, if every thing in the Rohilla country became the property of the British army?

At Bidjygar the case was totally different; the Company's was the principal, not the auxiliary force; and consequently

sequently the same reasoning would not apply in the smallest degree. Lord Thurlow professed that he did not see so much irregularity in the mode of proceeding adopted by the officers. The place itself must have fallen in a very few days; and, to avoid the dreadful consequences of a storm, Pauna was induced to surrender the fort, on condition of receiving 15 per cent. on the amount of the treasures in the fort; and Colonel Popham readily granted her those conditions. If, under such circumstances, the fortress was not to be deemed a fortress taken by storm, and it should be a prevalent idea, that nothing could justly plunder but the actual capture of a fortress by storm, he was much afraid that no fortresses in future would be permitted to surrender. On all grounds, Lord Thurlow said, it was most apparent, that Mr. Hastings was clearly with the officers in the question of their right to the property found in Bidjygur according to usage; and the only point in dispute was, whether they were justified in exercising that right themselves, under the two passages in the private letters from Mr. Hastings to Colonel Popham.

As to all the remaining parts of this Charge, he imagined their Lordships would be of opinion that they had not been made good. It must have been owing to carelessness that Mr. Hastings was criminally charged for raising the public revenue from two hundred and thirty to four hundred thousand pounds a year. He had already said that that additional revenue had been regularly paid from the time it was settled by Mr. Hastings to the present day. The remaining allegations were equally unimportant in his mind; but he would sit down without moving any question until he heard the sentiments of other Noble Lords; for he was seriously anxious to go into the fullest discussion of every point on which there could be the slightest difference of opinion amongst their Lordships.

The Lord Chancellor said, he had no objection to the taking the whole of the residue of the Charge on one question, because undoubtedly the plunder of the soldiery on the taking of the fort of Bidjygur was the main fact alleged in the residue of the Charge; but he could not hold differing materially with the Noble and Learned Lord, as to his reasoning upon that

fact, and all the circumstances of the case. He would put wholly out of the question all consideration of the fact of the Rannee, because, though arguments might be drawn from it calculated to add to the colouring, and heighten and aggravate the extent of the Charge, they were rather to be regarded as an appeal to the passions of their Lordships than to their judgment. With regard to the law of plunder, it was in itself an indefinite term. He conceived that nothing could properly be deemed plunder that had not undergone a legal adjudication. Nobody would contend that an army might spread itself over a country, and seize upon every species of property it met with, because that would not only prove a total want of discipline, but tend evidently to the ruin of the army itself. A soldier so possessing himself of the property of another, would not only in the eye of the law be individually responsible to the owner, but would be guilty of a criminal act. That, however, did not immediately apply to the conduct of Mr. Hastings, in respect to the Charge under the consideration of the Committee, upon which, speaking as a judge, he could not avoid saying, he was impressed with a very different opinion from that stated by the Noble and Learned Lord.—He thought the conduct of Mr. Hastings throughout the transaction highly unjustifiable; and he rested that sentiment on the proof afforded by the two letters, that of the 22d of October, and that of November the 3d, from which the Noble and Learned Lord had drawn conclusions so extremely favourable to Mr. Hastings. His Lordship read the essential part of the letter of October 22, 1781, as follows: “I am this instant favoured with yours of yesterday, “Mine of the same date has before this time acquainted you with my “resolutions and sentiments respecting the Rannee (the mother of the “Raja Cheyt Sing). I think every “demand she has made to you, except that of safety and respect for “her person, is unreasonable. If the “reports brought to me are true, “your rejecting her offers, or any “negotiations with her, would soon “obtain you possession of the fort upon your own terms. I apprehend “that she will contrive to defraud “the captors of a considerable part “of the booty, by being suffered to “depart

depart without examination; *But this is your consideration, and not mine.* I should be very sorry that your officers and soldiers lost any part of the reward to which they are so well entitled; but I cannot make any objections, as you must be the best judge of the expediency of the promised indulgence to the Rannee. What you have engaged for I will certainly ratify," &c. His Lordship proceeded to comment on the language and terms of this letter, and reprehended every one of the strong passages, especially that in which Mr. Hastings, after expressing his apprehensions of the Rannee's contriving "to defraud the captors of a considerable part of the *booty*, by being suffered to retire without examination," says—"but this is your consideration, and not mine." So far from this being proper language and advice for Mr. Hastings to hold, he contended, that it was a gross neglect and omission of his duty; and, coupled with the next sentence—"I should be sorry that your officers and soldiers should lose any part of the *reward* to which they are so well entitled," amounted not merely to a licence, but held out an encouragement to plunder.

Having emphatically pressed his remarks on these parts of the letter of October, his Lordship adverted to that of November, and observed upon it with equal severity. The letter of November 3, 1781, was as follows: "I am willing to grant her now the same conditions to which I at first consented; provided that she delivers into your possession, within twenty-four hours from the time of receiving your message, the fort of Bidjy-gur, with the treasure and effects lodged therein by Cheyt Sing, or any of his adherents, with the reserve only, as above mentioned, of such articles as you shall think necessary to her sex and condition; or as you shall be disposed of *yourself* to indulge her with. If she complies, as I expect she will, it will be your part to secure the fort, and the property it contains, for the benefit of *yourself* and detachment. I have only further to request that you will grant an escort, if Pauna should require it, to conduct her here, or wherever she may chuse to retire to: But should she refuse to execute the pro-

mise she has made, or delay it beyond the term of twenty-four hours, it is my positive injunction, that you immediately put a stop to any further intercourse or negotiation with her, and on no pretext renew it. If she disappoints or *trifles* with me, after I have subjected my Duan to the disgrace of returning ineffectually, and of course myself to discredit, I shall consider it as a *wanton affront and indignity which I can never forgive*; nor will I grant her any conditions whatever, but leave her exposed to those dangers which she has chosen to risque, rather than trust to the clemency and generosity of our government. I think she cannot be ignorant of these consequences, and will not venture to incur them; and it is for this reason I place a dependence on her offers, and have consented to send my Duan to her." His Lordship contended that nothing could be more tyrannical, arbitrary, and oppressive, than the style and terms of this letter; it was such as a British Governor could scarcely be warranted in having written on almost any occasion that could possibly have occurred; least of all could it, in his mind, be justified under the peculiar circumstances of the case in question. As to the subsequent attempt to make the officers and soldiers refund the plunder which they had been thus encouraged to take, and to pay it on the footing of a loan, his Lordship conceived it was rather to be treated as a matter of ridicule than of serious argument. Their Lordships all pretty well knew how difficult it was to get any body to refund—especially a victorious soldiery. With regard to other parts of the Charge, the Lord Chancellor said, he had differed from the Noble Lord before, and he still retained the sentiments he had stated on that subject to the Committee; he therefore thought the conduct of Mr. Hastings, as alleged in that part of the First Article, did amount to a high misdemeanor, and he should give his vote for the question, "That the Commons had made good the Charges contained in the residue of the First Article."

Lord Thurlow in reply said, that the Noble and Learned Lord had mistaken his statement. The first letter to Major Popham contained an opinion as to the best mode of getting possession of the fort, but positively refusing to al-

low Pauna to exercise independent authority in the Zemindary of Benares. The second contained an unqualified assent to all the propositions made by Pauna on the surrender of the fort. It was absolutely impossible that Mr. Hastings could be supposed to intend either to excite the army to rapine or outrage, by any sentiments contained in those letters.

The Lord Chancellor said, he had no objection to the Learned Lord's putting all that remained of this Article into one question.

Lord Thurlow then moved, "That the Commons had made good the ten remaining allegations in the 'First Article,' which was negatived."

MONDAY, MARCH 16.

The Duke of Norfolk rose, and said, that previous to the House going into the Committee, he wished to notice the proceedings that had already taken place. His Grace in some manner censured the mode that had been adopted, of putting the question upon every individual Article of each Charge, and dividing upon it: The decision thus given, went abroad as the verdict of the House upon the Charge thus discussed; but his Grace thought, that the Peers should each in their individual capacity, as judges in this trial, give their verdict of Guilty or Not Guilty, upon each Charge of the Impeachment as presented by the Commons of England. Therefore, as he understood that the first Charge had already received that deliberation and decision in the Committee to which he alluded, and that the Committee were now going to the consideration of the second Charge, he thought it proper to suggest the above mode of decision, and made a motion to that effect.

This being objected to by Lord Thurlow, and his reasons for objecting to it stated, the Duke withdrew his motion, and then moved, "That the Committee of the whole House be directed to report to the House their Proceedings upon the First Article of 'the Impeachment against Warren Hastings, Esq.'"

Lord Thurlow in reply said, that if the Noble Duke had been present at the commencement of the consideration of the mode of proceeding proper for the House to adopt, as well for its own

convenience as for the better securing the ends of substantial justice, he would have heard the mode of proceeding fit to be adopted, deliberated upon with great coolness and temper, and known that the result had been a determination, that a Committee should take the several Charges separately into their consideration, and come to decisions on such questions as they should deem proper and applicable; and that the House should afterwards have a free and full opportunity of discussing the whole of their Resolutions, and the grounds on which they stood, previous to their proceeding to Westminster Hall to pass judgment. With regard to himself, his Lordship said, he had been perfectly indifferent what the mode of proceeding should be; but a Committee having been appointed, in the manner that he had stated, he thought their Lordships had better, for the present, leave the business in the hands of that Committee. His Lordship spoke of the absolute necessity of those who were to give a verdict on any charge of a criminal nature, previously to consult together, for the purpose of forming that verdict: and still more necessary was it, where there was a great number of judges to give a verdict upon charges so multifarious as those which were to be found in the Articles of the Impeachment.

It would, he said, be impossible for the House to determine on the mode proposed by the Noble Duke at present, because the House was not in possession of the particulars that had transpired in the Committee; a great deal of light had there been thrown upon the subject: but till a report from the Committee was made to the House, it would be presumptuous to give a verdict.

The Duke of Norfolk said, he was by no means convinced by what had fallen from the Noble and Learned Lord. He admitted that a previous consultation among those who were to deliver a verdict, was in almost all cases necessary, but he thought his motion would tend to render the proceedings more clear and perspicuous. His Grace said, that what he meant to impress upon the House as his opinion was, that they should give their verdict upon the different Charges in the same manner as if they attached to distinct persons, and for that reason he had made his motion; but upon the observation of the Noble and Learned Lord, he now

found

found that it would have been more consistent with the forms of debate to have let the House go into a Committee, and then have moved that the Chairman report progress; however, as it was understood that the Committee were to go into the second Charge of the Impeachment, and he wished the House to discuss the first, he trusted that the seeming irregularity of his moving for the report now would not be deemed irrelevant. His Grace persisted in his motion.

Lord Thurlow said, that this motion went to discharge the Committee, and take the business out of their hands.

The question was put, and the *Not-Contents* had it.

The House then resolved itself into a Committee. Lord Walsingham in the Chair; when

Lord Thurlow addressed their Lordships on the matter contained in the Second Article. He said, that he should wait until he heard the sentiments of other Noble Lords, before he proposed to put only a single question upon this Article, which, in his opinion, would be sufficient. If any Lords should desire to divide it into parts, he would propose as many separate questions as there should appear to be doubts as to the innocence of Mr. Hastings. In his view of the subject, there were but three points to be considered in this Article:—The propriety of Mr. Hastings's conduct, first in assenting to the Nabob's proposition for resuming the jaghires, and afterwards, for using a degree of compulsion to induce him to adopt that salutary measure: Secondly, his consent to the resumption of the treasures of his mother: And thirdly, his disobedience of (what the Charge calls) the orders of the Directors, in not making a full inquiry into the fact of the Begums rebellion. These were the three points, according to his idea, on which the Charge turned, in so far as there was any evidence produced that affected Mr. Hastings. The supposed treaty with the elder Begum he should pass over, because it was clear from the evidence; that neither the Board nor Mr. Hastings had authorized Mr. Middleton to conclude any treaty with her. The hardships and distresses which had been twice sustained by the women in the Khord Mohul, he should also pass over; since it was perfectly clear to him from the evidence, that Mr. Haf-

tings never heard of them. It is also clear from the evidence, that when the humanity of an English officer induced him to relieve them, the Nabob wrote a very angry letter to him, for pretending to interfere in the manner he did. He should also pass over the allegation of the horrid and cruel methods practised to compel the eunuchs to discover the treasures of the Begum. There was no proof that any such means had been made use of; but here again, Mr. Hastings neither authorized nor advised horrid or cruel means—His orders were direct, clear, and positive: First, that the service should be prosecuted until the Begum and her servants were at the entire mercy of the Nabob, and their wealth secured from private embezzlement; and next, it was his strenuous advice to the Nabob, that the conduct of the Begum's eunuchs at the time of the rebellion should be fully investigated; and that, if on such investigation they should be found guilty, the Nabob would punish them exemplarily, as an example to others. Their Lordships knew from the evidence, that this advice was not followed, nor his orders obeyed. The eunuchs were pardoned on the condition of paying a certain sum from the Begum's treasury, and it was for a deficiency in performing their agreement, that they were confined from February to October 1782, a short part of the time in very slight irons; but the place of their confinement was a palace, and they had its gardens to range in. Even of this slight confinement it was in evidence also that Mr. Hastings was ignorant, and consequently the propriety of his conduct turned only on the three points which he had already mentioned to their Lordships.

Before he considered these three transactions, his Lordship said, he would mention the point of view in which the Charge struck him, which, though unnecessary for him to state to satisfy his own conscience in the vote which he should give, did, he conceived, require very serious consideration from any Noble Lord, if there was one, who thought that the Commons had made good any one point in this Article.

A Noble and Learned Lord (Loughborough), in the discussion of the Benares Article, had said, that the Managers for the Commons had weakened their cause very much, by their attempts to prove that Chyet Sing was

an independent Prince. Had they succeeded, the case, in the Noble and Learned Lord's opinion, would have been very different, because the distinction between doing an act of injustice to your own subjects, and to an independent Sovereign, or the subjects of an independent Sovereign, was very material indeed. Lord Thurlow said, that he fully concurred with the Noble and Learned Lord, and he desired him to take the distinction in the present case. The Commons, it is true, had affirmed in their Articles, that the conduct observed towards Cheyt Sing and the Begums, had involved the British name and character in unspeakable dishonour and disgrace in the eyes of all Asia. It had been fully proved, and the last evidence to the point was the Marquis Cornwallis, that if such consequences did follow from these acts, nobody ever heard of them; and he could have no hesitation in saying, that the allegation was unfounded. The question then would be, Whether the Minister of one State, procuring, either by management or compulsion, a measure to be done, which was highly advantageous to his own State, could be amenable for the act, because it involved in it a degree of injustice to the subjects of another State? That was the question; for whatever degree of influence Mr. Hastings might possess over the Nabob of Oude, still he was ostensibly an independent Sovereign, and it was by management alone, not by force, that we acquired and retained our influence over him—an influence which began in 1775, and continued to this day precisely the same; as he should have occasion to shew to their Lordships in the detail which he would now proceed to lay before them; for, as the detail advanced, he thought it would clear up every circumstance relative to Mr. Hastings.

In the month of January 1775, Sujah Dowlah died, a prince formed for the government of a great empire: He nominated in his last illness, his only legitimate son, Asoph ul Dowlah, to the succession. This young prince, independent of his wanting all the qualifications that distinguished his father's character, succeeded under terms that will well account for all his subsequent misfortunes. His father had recently added the country of Rohilcund, the Dowah, Corah, Currah, and Allahabad, to his dominions. A large force

was necessary to secure acquisitions so recently attained. The army was very considerably in arrears, the exact amount of those arrears does not appear in evidence, and four hundred and eighty thousand pounds were due to the East India Company. The treasury contained money enough to extricate the Nabob from all his difficulties, amounting by common report to more than four millions sterling, but supposed by Mr. Bristow, on good information, to amount at least to two millions sterling. This treasure, unhappily for the Nabob, was in the Zenana of the palace of Fyzabad, and under the charge of the Nabob's mother, who had officiated as the treasurer of Sujah Dowlah prior to his decease.

The Charge calls these treasures valuable moveables, of which, as it affirms, the Begums were possessed, in order to enable them to maintain their own rank and dignity, as well as for the maintenance of their numerous family and dependents. But the evidence fully proves, that they were the public treasures of the State, amassed, as the Begum's eunuchs confessed to Mr. Bristow, to provide against an emergency; and consequently, in point of justice, before the Begum could claim her eighth of those treasures, the debt of the Company, and the sums due to Sujah Dowlah's army at his decease ought to have been paid from them.

It is impossible to review, said Lord Thurlow, the scene that followed without wonder, and even indignation. The Nabob, weak and ill-advised, addicted to those vices the most base and degrading to the human character, converted the companions of his miserable pleasures and debaucheries into Ministers of State. His mother, as he told Colonel Galliez, soon after his accession, was his bitter enemy; and it appears by a subsequent letter from her, that there had been great differences between them. He continued in this state of distress from his accession in January 1775, until the month of May, when it was rather increased than diminished.

But it is now material to consider the conduct pursued by the British Government, and that may be done in a very few words.—On the death of Sujah Dowlah, the Council acknowledged his son as Nabob of Oude, but determined, against the opinion of Mr. Hastings, that the treaties subsisting be-
tween

proved that the treasures lodged in the Zenana belong to the ladies of the Zenana. There is full evidence, that the treasury of Sujah Dowlah was in the Zenana of Fyzabad, and that the Begum's signature, as his treasurer, was necessary for all considerable issues of money from that treasury.

The next point, my Lords, on which the Managers relied to prove the guilt of Mr. Hastings was, his refusal to obey the orders of the Directors received in August 1783, for making a fuller inquiry into the supposed rebellion of the Begums in 1781. To this point they called Mr. Stables, a very worthy man, but certainly not remarkable for the brilliancy of his talents, or the quickness of his conceptions. They ask him, if he did not move the inquiry into the Begum's conduct, and why he moved it? He tells them he did so, because he conceived that inquiry to have been ordered by the Directors, as his minute written at the time would shew. Now, my Lords, the Managers, in order to support the credit of their witness, produced the minute alluded to, in which Mr. Stables distinctly states that his reason for moving an inquiry was, because the Directors seemed not to be *satisfied* with the information before them—a very different statement indeed from that which appears in the Charge, and which Mr. Stables, by his oral evidence, did in fact support. However, the reference to the minute which Mr. Stables made, clearly proved that that gentleman did not mean to mislead your Lordships, and it was rather hard to examine him as to his motives for making the motion he did, when a reference to the minute written at the time was the best evidence to the point. The debate at the Board on the subject of the letter, which the Managers contend to be an order for a further inquiry into the conduct of the Begum, sets the whole matter in so clear a point of view, that I am astonished how such a charge could have been made in the name of the Commons, and not less surprized that it should be supported by evidence which, in the opinion of every man of common sense, most effectually refutes it. A letter was received from the Directors in the month of August 1783, directing, in a very confused and perplexed sentence, that if it should appear that the Begums had not taken so active a part in the rebellion of Cheyt Sing as

had been reported, the Nabob should be applied to, to restore them their jaghires. The letter also says, that they do not appear to have armed prior to the revolt of Cheyt Sing, and it is probable that their subsequent conduct was occasioned by apprehensions which they also entertained, of being laid under unwarrantable contributions. Your Lordships will be of opinion, that it must have been under very extraordinary circumstances indeed, that thirteen gentlemen could have been found to put their names to a letter containing such orders and opinions. The question for an inquiry was originally moved by Mr. Wheeler: he expresses his readiness at all times to obey orders; but, before they apply to the Nabob, he wishes to inquire how far they merit the application for the restoration of their jaghires. Nothing had passed, Mr. Wheeler says, to change his opinion, that the Begums had been concerned in the rebellion; that he had been confirmed in the belief, from the opinions of many individuals, totally unconcerned in the business: but, as the Directors seem to be of a different opinion, he thinks stronger proofs of their disaffection ought to be laid before them: and he concludes by moving, that the late and present Resident be called upon to collect such proofs.

Mr. Hastings conceives Mr. Wheeler to have misconceived the intentions of the Court of Directors, and therefore opposes the motion.

Mr. Stables, at the end of the next month, renews this subject, by observing, that the Directors seem not to be satisfied that the evidence sent to them had sufficiently proved the disaffection of the Begums, and therefore he moves a further inquiry.

Mr. Hastings conceives that they had sent no orders for an inquiry; that very strong and authenticated evidence had been sent to them already. He refers to the letter to confirm his sense of it; and he adds, "If evidence is to be collected, it should be collected from all persons capable of giving it, and not confined to official characters." Sir John Macpherson fully concurs with Mr. Hastings as to the sense of the Directors' letter; tho' on first hearing the letter read he had conceived a different opinion. He does not see what salutary purposes such an inquiry could answer; and I am sure your Lordships will agree with him. He observes, that there has

been no appeal from the Begums, and there was ample proof at the time, that those who managed the concerns of the Begums were no friends, but real enemies, to the English. The motion for an inquiry was wisely and properly negatived. Had Mr. Hastings conceived the possibility of what has since happened, he must have eagerly proposed, while in Bengal, a fuller inquiry into the disaffection of the Begums; and he would have weighed down the Directors by proofs of the fact; for though the case stood clear enough in my mind upon the affidavits, it has been so effectually strengthened by the testimony of a number of respectable officers, as to fix it beyond all doubt. The same evidence, and certainly much more in addition to it, might have been procured in India in 1783; and indeed Mr. Hastings then observed, that if an inquiry were to take place, he desired that all persons capable of giving information might be examined: but if your Lordships will look to this letter of the Directors, and to the date of it, February 1783, you will see the spirit with which it was written in a great degree to be imputed to the politics of the time. Sir Henry Fletcher was then the Chairman, and it was the fashion to censure Mr. Hastings for every thing he did. The letter sets out by saying, that they do not see the policy of retaining the jaghires, and thus uniting under one head all the power of the country, which might eventually become formidable to Bengal. Hard fate of Mr. Hastings! He is rated by the Directors for his endeavours to bring the dominions of the Nabob into order: he is censured by the Managers for having involved them in distress. The Directors, in speaking of the Begums, say, it does not appear that they took up arms prior to the revolt of Cheyt Sing, and, by arming afterwards, they only meant, in all probability, to defend themselves from unwarrantable contributions. My Lords, they never were accused of arming before the revolt of Cheyt Sing; and if they are innocent, as they really appear to be in the opinion of the Directors, for arming and acting against the English subsequent to that event, there is an end of the question: but no rational being can reason so absurdly. Your Lordships will see the name of Sir Henry Fletcher at the head of the thirteen gentlemen who signed the letter, and every thing done

at that period was done, in my opinion, to prove the necessity of the strong measure that was brought before Parliament in the course of that year. There can be no other rational way of accounting for the conduct of those gentlemen who framed that letter.

I have now, my Lords, gone, though at too great a length I fear, but still as shortly as I could, through the material facts alledged in the Article.

The resumption of the jaghires I deem to have been a measure of the soundest policy, and the means taken to compel the Nabob ultimately to adopt a measure proposed originally by himself, were not in any respect criminal, but meritorious.

The consent given by Mr. Hastings to the seizure of the treasures, and the care which he took to secure them from private embezzlement, were acts that appear to me in no respect criminal. Upon the most attentive consideration of the whole evidence, I am decidedly of opinion, that nothing criminal has been proved against the Defendant. At the close of the Charge, indeed, it is stated, that all the acts imputed to him, and stated to be criminal, are highly aggravated by the avowed corruption in which they originated; Mr. Hastings having accepted a present of ten lacs of rupees from the Nabob at the time he signed the treaty of Chunar. There is another Article in which the receipt of this Present is expressly charged, and there it will be proper to consider it fully; as inserted in this Article, it appears to be very inconsistent with the general tenor of the rest of it. In the former allegations, Mr. Hastings is said to have compelled the Nabob to adopt the two measures of resuming the treasures and the jaghires. At the close, the Nabob is supposed to have bribed Mr. Hastings to give his consent to the adoption of those measures.

I shall not intrude longer on your Lordships' indulgence, but will conclude by declaring, that though, until I hear the opinion of other noble Lords, I shall not make any motion; yet, if no objection is made, I mean merely to move, "That the Commons have made good the Second Article of Charge against Warren Hastings, Esq."

The Lord Chancellor said, he did not object to taking the decision on the whole Charge under one question. In his view of the Charge he had not considered Asaph ul Dowlah, the Nabob of

of Oude, as a foreign Prince and independent Sovereign, but as a person whose conduct and government were under the absolute controul and command of the overbearing influence of the East India Company's power exercised by Mr. Hastings. Having considered it in this light, he should have occasion, in order to shew that he had rightly viewed it, to refer to so many letters of Mr. Middleton's, that not being prepared sufficiently, it would save their Lordships time if they were to adjourn where they then were in respect to the Charge; because, if they determined to proceed, he must necessarily call for all the letters to be read, to which he wished to refer, and that would waste much time; whereas he would undertake to be ready with such extracts as he should deem it requisite to refer to by the next day.

Lord Thurlow consented; and the Chairman having stated that the question before the Committee was,

"That the Commons had made good the Charges in their Second Article, respecting the Begums," it was moved and agreed to that he should leave the chair.

The Committee adjourned the consideration of the motion till

TUESDAY, MARCH 17, when the Lord Chancellor rose, and began the resumption of his reply to Lord Thurlow, by admitting the proposition, that where the Minister of another country prevailed on a foreign Prince, who was an independent Sovereign, to do an act of injustice to one of his own subjects, that Minister was not criminally responsible and amenable to the laws of the Government he served under for such conduct; but where, on the other hand, it was proved that the Minister of a British Government procured the Prince of a foreign country, who was not independent, but absolutely under the influence and controul of such Minister, to do an act of injustice to one of his own subjects, that Minister, he contended, was clearly amenable to British laws for having done that which was in itself, in the view of British laws, illegal and criminal. The decision of the Court of Common Pleas in the case of Rafael the Armenian and Governor Verelst had turned entirely on that point. It

was in that case proved that Sujah Dowlah, the then Nabob of Oude, was under the awe and influence of Governor Verelst, and that fact led to the ultimate judgment.

His Lordship stated all the circumstances of the case*, which had been first decided against the defendant Verelst, with 5000*l.* damages, and on the new trial, a special verdict was returned by the jury, upon which, at length, the Court decided for the plaintiff, and he obtained considerable damages. He shewed upon what ground it was that on the first trial all the Judges, excepting Sir William de Grey (Chief Justice), entertained strong opinions of doubt as to the question, Whether Governor Verelst, as Governor of Bengal, was amenable to British laws, and to the cognizance of an English Court of Judicature, for any wrong done to another person by a foreign Prince. He then traced the cause through the progress and particulars of the second trial, and declared, that the manner in which the jury had returned the verdict was such as removed from the minds of the three dissenting Judges of the Court, Mr. Justice Gould, Mr. Justice Blackstone, and Mr. Justice Nares, all occasion to insist further on their doubts. It was in consequence, as he had stated, that Governor Verelst lost the cause, and paid considerable damages. A writ of error was talked of, but no such writ was brought up to that House. The point, therefore, was legally established by the event of that trial, that the Minister of the government of India, under the sovereignty of Great Britain, was amenable to British laws, for having been the cause of a foreign Prince, confessedly under his controul, awe, and influence, having injured one of his own subjects in such a degree, as to entitle him to recover damages in an English Court of Judicature, provided that he could make out his case and prove his damages to the satisfaction of an English jury. The case of the Armenian Rafael and Governor Verelst, to be seen in Justice Blackstone's Reports, 983, 1055, his Lordship said, was directly in point with the case alledged in the Charge respecting the conduct of the Nabob to the Begums. As Sujah Dowlah was confessedly known to be subject in the whole of his conduct to the controul of Governor Verelst, so, in

* Tried in the Court of Common Pleas at Guildhall, in Hilary Term 15. Geo. III.

like manner, the reigning Nabob Asoph ul Dowlah was under the absolute controul, awe, and influence of Mr. Hastings, who was in fact the contriver, inventor, and in truth might reasonably be stated to be the perpetrator of all the injustice practised under the name of the Nabob on the Bhow Begum and the Begum (his mother and grandmother), and all the crimes and enormities alleged in the Charge.

In order to prove the influence which Mr. Hastings had over Asoph ul Dowlah, the vassalage in which he held him, and that he suggested the measures of resuming the jaghires, which the Nabob had granted to the Begums, and seizing upon the treasures in their possession, in the Zenana, he caused letters, and various extracts of letters*, written to Mr. Hastings by Mr. Middleton, the Resident at Lucknow, in Dec. 1781, and

* The following are the extracts from the letters on the subject of resuming the jaghires and seizing upon the treasures, which passed between Mr. Middleton, the Resident in Oude, and the Governor-General, in December 1781, and January and February 1782, read by the Clerk.

Mr. Middleton to the Governor-General; dated Lucknow, the 1st of December 1781.

"I have this day signified to the Minister my expectation that the whole of the jaghires be resumed, and their revenue, after paying to such of the proprietors as have a right to claim the mediation of our Government the amount of their jaghires, be applied to the liquidation of the Nabob's debt to the Hon Company. I shall be very glad if his Excellency consents to make this measure an act of his own, as I conceive it would be more agreeable to you, and more consistent with those appearances which it may be thought expedient to preserve with his Excellency; but if he declines it, as is by no means improbable, I shall think myself justified by your instructions in insisting on its being done even without his concurrence."

Mr. Middleton to the Hon. Warren Hastings; dated Lucknow, the 6th of December 1781.

"Finding the Nabob wavering in his determination about the resumption of the jaghires, I this day in presence of and with the Minister's concurrence, ordered the necessary perwannahs to be written to the several amils for that purpose, and it was my firm resolution to have dispatched them this evening, with proper people to see them punctually and implicitly carried into execution: but before they were all transmitted I received a message from the Nabob, who had been informed by the Minister of the resolution I had taken, entreating that I would withhold the perwannahs until to-morrow morning, when he would attend me, and afford me satisfaction on this point."

Mr. Middleton to the Hon. Warren Hastings; dated Lucknow, the 7th of December 1781.

"My dear Sir,

"I had the honour to address you yesterday, informing you of the steps I had taken in regard to the resumption of the jaghires. This morning the Vizier came to me according to his agreement, but seemingly without any intention or desire to yield me satisfaction on the subject under discussion; for after a great deal of conversation, consisting on his part of trifling evasion and puerile excuses for withholding his assent to the measure, though at the same time professing the most explicit submission to your wishes, I found myself without any other resource than the one of employing that exclusive authority with which I consider your instructions to vest me. I therefore declared to the Nabob, in presence of the Minister and Mr. Johnson, who I desired might bear witness of the conversation, that I construed his rejection of the measure proposed as a breach of his solemn promise to you, and an unwillingness to yield that assistance which was evidently in his power towards liquidating his heavy accumulated debt to the Company; and that I must in consequence determine, in my own justification, to issue immediately the perwannahs, which had only been withheld in the sanguine hope that he would be prevailed upon to make that his own act, which nothing but the most urgent necessity could force me to make mine. He left me without any reply, but afterwards sent for his Minister, and authorised him to give me hopes that my requisition would be complied with; on which I expressed my satisfaction, but declared that I could admit of no further delays, and unless I received his Excellency's

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and Jan. and Feb. 1781, to be read, and also the letter written by Mr. Hastings and his Council to the Direc-

tors at home, and that passage from his Defence before the House of Commons, in which Mr. Hastings says the treasures
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formal acquiescence before the evening, I should then most assuredly issue my perwannahs, which I have accordingly done, not having had any assurances from his Excellency that could justify a further suspension."

Mr. Middleton to the Hon. Warren Hastings, dated Lucknow, the 9th of December 1781.

"My dear Sir,

"I had the honour to address you on the 7th instant, informing you of the conversation which had passed between the Nabob and me on the subject of returning the jaghires, and the step I had taken in consequence—His Excellency appeared to be very much hurt and incensed at the measure, and loudly complains of the treachery of his Ministers: First, in giving you any hopes that such a measure would be adopted; and secondly, in their promising me their whole support in carrying it through. But, as I apprehend, rather than suffer it to appear that the point had been carried in opposition to his will, he at length yielded a nominal acquiescence, and has this day issued his own perwannahs to that effect; declaring, however, at the same time, both to me and his Ministers, that it is an act of compulsion."

The Governor-General to Mr. Middleton; dated Benares, the 26th of December 1781.

"I have waited thus long in the hopes of hearing that some progress had been made in the execution of the plan which I concluded with the Nabob in September last. I do not find that any step towards it has been yet taken, though three months are elapsed, and little more than that period did appear to me requisite to have accomplished the most essential parts of it, and to have brought the whole into train. This tardiness, and the opposition prepared to the only decided act yet undertaken, have a bad appearance. I approve the Nabob's resolutions to deprive the Beguins of their ill-employed treasures."

Mr. Middleton's private Letter to the Governor-General; dated Lucknow, the 28th of December 1781.

"If your new demand is to be insisted upon, which your letter seems to portend, I must beg your precise orders upon it; as, from the difficulties I have within these few days experienced, in carrying the points you have enjoined with the Nabob, I have the best grounds for believing that he would consider it a direct breach of the late agreement, and totally reject the proposal as such; and I must own to you, that, in his present fermented state of mind, I could expect nothing less than despair, and a declared rupture."

"The warring Furruckabad, Kyrigue, and Fyzula Cawn's country from his government (for in that light, my dear Sir, I can faithfully assure you he views the measures adopted in respect to those countries), together with the resumption of all the jaghires, so much against his inclination, have already brought the Nabob to a persuasion that nothing less than his destruction, or the annihilation of every shadow of his power, is meant; and all my labours to convince him to the contrary have proved abortive. A fetid melancholy has seized him, and his health reduced beyond conception; and I do most solemnly believe, that the march of four regiments of Sepoys towards Lucknow, under whatever circumstances it might be represented, would be considered by him as a force ultimately to be used in securing his person. In short, my dear Sir, it is a matter of such immediate moment, and involving apparently such very serious and important consequences, that I have not only taken upon me to suspend the communication of it to the Nabob, until I should be honoured with your further commands, but have also ventured to write the inclosed letter to Colonel Morgan—liberties which I confidently trust you will excuse, when you consider that I can be actuated by no other motive than a zeal for the public service; and that if, after all, you determine that the measure shall be insisted on, it will be only the loss of six or at most eight days in proposing it. But, in the last event, I earnestly entreat your orders may be explicit and positive, that I may clearly know what lengths you would wish me to proceed in carrying them into execution."

tures were seized in consequence of the resistance made by the Begum to the resumption of her jaghire. This account was undoubtedly true, and it naturally excited a very considerable

degree of suspicion, when false motives were assigned for an action so very extraordinary in its nature, as the seizure of the treasures of the mother of a sovereign Prince. He said it appeared

Mr. Middleton's public Letter to the Hon. Warren Hastings, Governor-General, &c. &c. dated Lucknow, the 30th of December 1781.

" For the sake of perspicuity, I have thought it best to recapitulate the several paragraphs of your letter, and arrange my answers to them respectively in the same order.

" 2d. I have waited thus long, in hopes of hearing that some progress has been made in the execution of the plan which I concluded with the Nabob in September last; I do not find that any step towards it has yet been taken, though three months are elapsed, and little more than that period did appear to me requisite to have accomplished the most essential parts of it, and to have brought the whole into train. This tardiness, and the opposition prepared to the only decided act yet undertaken, have a bad appearance.

" In reply to the second paragraph, I beg leave to refer you to my former letter, stating the turbulent state of the country. Three months is a period in which the changes you allude to probably might have been effected in times of perfect tranquillity; but when all the districts across the Gogra were in arms, and all the jagheirdars (a very numerous and powerful body) were very little short of the same state in every district, and for the regulating and reduction of whom the aumils were principally to be applied to—could a general change or attack upon those aumils with ease have been undertaken? I think not; but I put this argument of the practicability or impracticability out of the question, as it was not that consideration which prevented me from enforcing the measures recommended by you to the Nabob in the treaty.—the fact is this: I did not understand, at the period of executing the agreement between you and the Vizier, that your intention was, that the whole of the reform proposed was in its fullest extent to take place this year, nor indeed at all, if the Company's debt became liquidated; I conceived your interference in the Nabob's government tended solely to establish the means of the most speedy payment possible of the Company's debt, and that whenever this should be accomplished, every shadow of interference was to be desisted from; which I stated to the Nabob and the Ministers, and I believe upon the faith of that assurance principally was his Excellency's acquiescence obtained.

" 3d. I approve the Nabob's resolution to deprive the Begums of their ill-employed treasures. In both services it must be your care to prevent an abuse of the powers given to those that are employed in them. You yourself ought to be personally present. You must not allow any negotiation or forbearance, but must prosecute both services until the Begums are at the entire mercy of the Nabob, their jaghires in the quiet possession of his aumils, and their wealth in such charge as may secure it against private embezzlement."

" To the 3d paragraph I shall only say, that I march to-morrow with the Nabob to enforce both the services you exact in it; and if I succeed, as I have the strongest reasons to hope, in obtaining large ready-money resources towards liquidating the arrears to the troops, which form a large proportion of the debt to the Company, I have not a doubt of accomplishing every end you have now declared you look to the instant performance of."

to him, from the letters of Mr. Middleton, that both he and Afoph ul Dowlah were reluctant to comply with Mr. Hastings's suggestion to seize on the treasures of the Begums; he said no proof had been given that the Begums had actually been in rebellion. The Lord Chancellor further observed, that at the time these compulsory measures were used towards the Nabob,

Mr. Middleton's private Letter to the Governor-General; dated Lucknow, the 30th of December 1781.

"My dear Sir,

"I have this day answered your public letter, in the form you seemed to expect. I hope there is nothing in it that may appear to you too pointed. If you wish the matter to be otherwise understood than I have taken up and stated it, I need not say I shall be ready to concur to whatever you may prescribe, and to take upon myself any share of the blame of the (hitherto) non-performance of the stipulations made on behalf of the Nabob; though I do assure you, I myself represented to his Excellency and the Ministers, conceiving it to be your desire, that the apparent assumption of the reins of his Government (for in that light he undoubtedly considered it at the first view), as specified in the agreement executed by him, was not meant to be fully and literally enforced, but that it was necessary you should have something to shew on your side, as the Company were deprived of a benefit without a requital; and upon the faith of this assurance alone, I believe I may safely affirm, his Excellency's objections to signing the treaty were given up. If I have understood the matter wrong, or misconceived your design, I am truly sorry for it; however, it is not too late to correct the error; and I am ready to undertake, and, God willing, to carry through, whatever you may, on receipt of my public letter, tell me is your final resolve."

Mr. Middleton to the Hon. Warren Hastings, Governor-General, &c. &c. dated Fyzabad, the 13th of January 1782.

"With respect to the business here, I have the honour to inform you, that yesterday, finding that the temporising and indecisive conduct of the Nabob seemed to promise an issue very different from that expected in your commands of the 26th of December last."

Mr. Middleton to the Hon. Warren Hastings, Governor-General, &c. &c. dated Fyzabad, the 20th of January 1782.

"Sir,

"The Begum having finally agreed to surrender to the Nabob the treasures of his late father, the Nabob Sujah ul Dowlah, which she had hitherto retained in her possession, his Excellency desired me to withdraw the troops from the Kella."

Mr. Middleton to the Hon. Warren Hastings, Governor-General, &c. &c. dated Lucknow, the 11th of February 1782.

"Sir,

"Inclosed I have the honour to forward you addresses from his Excellency the Vizier and his Ministers. In justice to the latter, it is incumbent upon me to inform you, that during the progress of the business at Fyzabad, I received from them the most willing and zealous support; and that to their exertions I consider myself greatly indebted for the complete success which attended that business."

His Lordship lastly referred to the letter transmitted by the Governor-General and Council to the Directors, dated the 11th of February 1782.

Extract from the Letter of the Governor-General and Council to the Court of Directors, dated the 11th of February 1782.

"In order to punish the Begum for this daring ill conduct (marching an armed force to oppose the refumption of the jaghires), and to put it out of her power to apply the treasures which she had amassed to the purpose of raising any further commotion in the country, the Nabob resolved to seize her wealth, which by the Mahomedan law he was entitled to as an inheritance from his father, who in the latter years of his life had committed his treasury wholly to her charge, and it remained with her after his death."

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his country in every part of it was filled by troops under the command of British officers and in British pay; that it was perfectly true there had been tumults and insurrections in the province adjoining to the Begum's jaghirs; but these were to be attributed, in his opinion, to the oppressions of Colonel Harnay and his officers, not to the interference of the Begums or their counsels; and therefore, he contended, there was no real ground for the leaning upon their treachery, and treating them in the severe and oppressive manner in which they had been treated. His Lordship concluded with declaring that, to his conviction, Mr. Hastings ought not to be acquitted of the Charge, but that the Managers had made it good.

The Earl of Morton said, he was much surprised to hear the Learned Lord say, that no proofs had been given of the rebellion of the Begums. Did his Lordship lay no stress upon the strong facts stated in the *Memorials*, and the pointed evidence given in Westminster Hall by many very respectable officers, relative to the Begum's soldiers having been actually taken to arms at Patna, and the other strong circumstances, which, his Lordship said, carried complete conviction to his mind, that they took a very active part in that rebellion?

Lord Thurlow, in reply, went much at large into a circumstantial statement of the evidence of Ranaul and Governor Vereist, and declared what had been his opinion upon such a case at the time that he was Attorney-General, communicating again and again to Sir Francis Perrin, the Under Secretary of State, respecting the treatment of a French subject in France, or a Spanish subject in Spain, through the interposition of this country. He declared, as a lawyer, the truth of the proposition laid down by the Noble and Learned Lord, respecting the Minister of the British Government being legally amenable for any act of an independent foreign Prince to one of his own subjects, and contended, that Asaph ul Dowla could be considered no otherwise than as an independent foreign Prince: as even we had recognised him in solemn treaties, and in all the acts of the British Government in India. He sat upon the throne of Oude, and was looked upon as an independent sovereign Prince. He must therefore not be treated for any purpose the *offensive*

Sovereign, and the *offensive* Nabob and Vizier of Oude, and an independent Sovereign and Nabob for another.

Having replied to this point, his Lordship proceeded to answer the remarks of the Learned Lord. If, said he, I have succeeded in conveying to your Lordships the opinions which I entertain, I certainly did state the dependence of the Nabob upon the Bengal government as broadly as the Learned Lord himself has laid it down; all I contend for is this: That it was exercised, and necessarily exercised, by all preceding and successive Administrations in the same manner: by the majority in the time of General Clavering, by Mr. Hastings, by Lord Cornwallis, and by Sir John Shore. Let me entreat your Lordships to look to the letter written by Mr. Hastings in the year 1777 to the Nabob. He there represents to him, in the most forcible language, the absolute necessity of appointing a Naib of character, and investing him with great power: that by no other means can his affairs be brought into order. He begs him to discard the unworthy characters that surround him, and one man in particular, whom he mentions by name. What is the threat if his advice is not followed? It is this, my Lords—The English will not continue a connexion with you. It will be dishonourable to them. The advice was followed. The Minister recommended by Mr. Hastings was appointed. I mean Hyder Beg Khan, the officer and the superior, Husein Reza Cawn, being but a nominal Minister. Hyder Beg Khan received from Mr. Hastings the strongest assurances of support as long as he continued to execute the duties which he owed to his master with fidelity, in which the interests of the Bengal government were so materially concerned. He received precisely the same assurances from Lord Cornwallis. In other words, he was protected both by Mr. Hastings and Lord Cornwallis against the intrigues of those men who were the companions of the Nabob's looser hours, and without such protection he could not have held his station a year. This Minister, who in some of the Articles before your Lordships is called an implacable tyrant, died while Lord Cornwallis was upon the coast in the year 1791. His Lordship, in his letters to the Directors, laments his death as a great public misfortune, both on account

of his attachment to the English, and his abilities, which were professedly, his Lordship says, superior to those of any other person in the Nabob's dominions. But to shew that the influence of the Bengal government is now what it always has been over the Nabob, Lord Cornwallis writes that the Nabob had declined to appoint a Prime Minister, from the time of Hyder Beg's death until his Lordship's return to Bengal. It is therefore perfectly clear that the Nabob has at all times been under a similar degree of influence to the government of Bengal.

The Noble and Learned Lord has read all that correspondence between Mr. Middleton and Sir Elijah Impey, and between Mr. Middleton and Mr. Hastings, to which I have so fully alluded, that I will not go over it again. I admit as distinctly as the Noble and Learned Lord can desire me to admit, that between the 19th of September and the 26th of December 1781, the Nabob did shew an extreme unwillingness to adopt those very measures which in the month of September he appeared firmly determined to adopt. I admit that Mr. Middleton's letters prove the fact most fully. The Learned Lord has also had a good deal of that private letter of Mr. Middleton's which accompanied his public letter of the 26th of December, in which he offers, if the public letter is not satisfactory, to alter it so as to make it conformable to Mr. Hastings's wishes; but adding, that if he had mistaken Mr. Hastings's intentions, he was very sorry for it. He had really conceived the sole end which Mr. Hastings had in view by the treaty of Chunar was to obtain the payment of the Nabob's debt in the shortest possible time. I am sure it must have been by mere accident that the Noble and Learned Lord had not ordered the clerk to read Mr. Hastings's answer to that letter, which was a reply to the whole series of Mr. Middleton's private letters. It is important indeed, and in my mind removes every degree of doubt and suspicion that can arise upon this Article in the breast of any candid man. Mr. Hastings, in terms of strong indignation, tells Mr. Middleton, "I have been deceived: I know not yet by whom." He goes on to express his surprise at the contents of Mr. Middleton's letters. "The resumption of the jaghires," says he, "though a mea-

sure to which the Nabob originally solicited my consent three months ago, is but at this moment about to be commenced, and against the Nabob's inclination. You expect resistance. You apply to Colonel Morgan for a regiment. You write to me, that unless you are much mistaken, a larger force will be necessary. Unwilling to risk the reputation of our army, or to tritter away our force by detachments, I order a larger force, and then you tell me the Nabob will never be brought to consent to the measure; and Mr. Johnson writes me, that it will be putting the temporary brigade upon him again."—"These (says Mr. Hastings) are absolute contradictions. I will not (adds he) divide the brigade at Cawnpour while the Marattas are on our frontier, and the peace with them so recently concluded. I have written to the Nabob, and do you tell him that I do not wish to interfere in his affairs against his inclinations; but I will not sacrifice the Company's interests to the caprice of his advisers. Let him pay the debt now due, and I will withdraw all our forces, and the Resident's office, but I will not suffer his ally to be a clear instance of an advantage to Bengal."—"Be cautious (he continues) that the Nabob does not misconceive my letter, as bearing any expression of displeasure towards him. I think him greatly deceived. I wish him to regard me as his friend, and to confide both in my faith and attachment. I am willing to give him undoubted proofs of both. I will do nothing for the preservation of his interests against his will; but I will not hazard the safety and honour of our arms, nor sacrifice the Company's interests and rights, to the caprice of his advisers." He concludes with observing, that his reputation may suffer from the delays that have marked Middleton's letters, in future may be official, that, if necessary, he may make a public reference to them. It is impossible for any of your Lordships to read this letter without being convinced that Mr. Hastings was in a very high degree offended at the letter which Mr. Middleton had written to him; and it is equally clear that he does not impute to the Nabob the delay. That

had taken place. The letter written by Mr. Hastings to the Nabob produced an immediate effect. The Nabob thanks him for his advice, and promises to follow it, which he does.

Mr. Middleton in his evidence imputes all this versatility in the Nabob's disposition to the influence of his personal favourites: I have not a doubt of the fact, and am convinced from the whole tenor of the evidence, that the Nabob was induced to act as he did, not to save the jaghire of his mother, but to prevent the resumption of the jaghires of his favourites. You have it in evidence, my Lords, that as early as March 1776, he urged his mother, through Mr. Bristow, to accept money in lieu of her jaghires, because, as he said, two rulers were too much for one country.

The Noble and Learned Lord surely does not mean to impress your Lordships with an idea that Mr. Hastings meant to compel the Nabob by force to resume the jaghires, or to take the treasures. The troops under British officers had been placed in Oude at the Nabob's desire, and for the protection of his country. It never was the intention of Mr. Hastings to use force, if we may judge from all that appears in evidence. On the contrary, Mr. Hastings most expressly says, that he will not interfere in the Nabob's internal government against his consent, and that he is ready to withdraw the Resident and all the troops that are in Oude, and to break off the connexion between the two countries, if the Nabob desires it. I have so fully explained already the nature of the compulsion used by Mr. Hastings, that I believe your Lordships are fully convinced it is very different indeed from that sort of compulsion described by the Noble and Learned Lord.

The Noble and Learned Lord supposes that the oppressions supposed to have been committed by Colonel Hannay were the real cause of the insurrections in September 1781. As the Manager who summed up the evidence on this Article professed to entertain the same sentiments, I was led to a very minute examination of the evidence to this particular point. But so far from finding any thing in it to justify such a conclusion, I must freely confess, my Lords, that the fact of the existence of Colonel Hannay's oppression is by no means established—it is mere idle ru-

mour. Mr. Holt's evidence is so very general, that I can make nothing of it. He went out a boy, between fifteen and sixteen years of age, with Sir Eyre Coote, in 1779; and in the next year he was in Barreetch and Gorrucpore. He knew nothing of the state of those countries prior to that period. He talks of seeing mud forts and bamboo prisons, where Renters were confined for their balances. He says the country had, as he has heard, an unfavourable opinion of Colonel Hannay, and in conversation he has heard that he was worth thirty lacks of rupees, or three hundred thousand pounds sterling.

Captain Edwards's evidence is equally loose and unsatisfactory to the point the Managers contended for. He had heard that the conduct of Colonel Hannay was oppressive, but he could speak to no particular fact. Colonel Ahmuty says, that he had heard reports of the inhabitants of Gorrucpore being much dissatisfied with Colonel Hannay, but he knows nothing of particular facts, as Gorrucpore was so distant from the place where he commanded: tho', my Lords, he adds, "all the Gorrucpore district were a rebellious people, and I believe were people who never paid any revenue to the Nabob, without its being very severely enforced."

In a very early period, long before Colonel Hannay went to Gorrucpore, that province was described by the British Resident as in such a state of anarchy and rebellion, that it could hardly be said to make a part of the Nabob's dominions. Major Lumsdaine, who knew Colonel Hannay, and well knew the country he managed, speaks of him in very high terms. There is nothing therefore upon the evidence that goes to a specific fact of oppression committed by Colonel Hannay or his officers. Three of his officers, Major Lumsdaine, Captain Williams, and Captain Gordon, were examined at your Lordships bar—Their testimony is perfectly clear, and fully proves that the British troops were opposed by forces in the Begum's pay. Major Macdonald, another officer of Colonel Hannay's, who is still in India, distinctly states in his affidavit, the hostile conduct of the eunuchs in the city of Fyzabad, and the critical situation in which he remained within fifteen miles of that city, for many days after the revolt of Chey Sing was circulated through the coun-

try. The notoriety of the rebellion of the Begum was such, that one of the witnesses at your Lordships bar, Captain Wade, I think, on being asked by a Manager if he was applied to to make an affidavit, said; that if any one in India had called upon him for such a purpose, he should have thought they were joking.

Another point on which the Noble and Learned Lord has laid a considerable stress, I have really so fully explained already, that I am afraid of trespassing upon your patience by going over the ground again. The Noble and Learned Lord says; that it ought to excite suspicion when we find a man giving a false account of the motives of his own conduct. He says, Mr. Hastings represents to the Court of Directors, and so states it in his Defence in the House of Commons, that the treasures were seized in consequence of the resistance made by the Begum to the resumption of her jaghires. My Lords, I admit it fully that he does so state it. But how? Mr. Middleton furnished the materials for the Defence in the House of Commons, and did so represent it, though he declared also in his evidence before the House of Commons, and though he has sworn before your Lordships that it was determined to resume the treasures before the jaghires were attacked. It is therefore beyond all question a blunder, and a blunder, as I observed before, which the Managers have allowed Mr. Hastings completely to correct, by inserting in their evidence what they call his second Defence. I admit also that the same blunder is committed in the letter to the Directors, of the 11th Feb. 1782, from the Board, and that Mr. Hastings signed the letter just after his return to Calcutta. But the Board refer the Directors most particularly to all Mr. Hastings's letters, and they say, that by those it will appear that it was to punish the Begum for her daring ill conduct in resisting the resumption of the jaghires, that the Nabob resolved to seize her jaghires. Now, my Lords, in the letter of Mr. Hastings, to which the Board refer the Directors, as containing complete information, that Gentleman most expressly states that he strenuously encouraged and supported the Nabob in seizing the treasures, because the Begum had assisted Cheysing during his rebellion, and so the Court of Directors fully understood it. To infer guilt therefore from a mistake

PART VIII.

of Mr. Middleton, or from the inaccuracy of the Secretary, in the wording of a general letter, is what I am sure, from the justice and honour of your Lordships, you never will do.

Upon the whole, my Lords, I declare to you upon my honour, that after the fullest investigation of every allegation in this Article, and comparing each most carefully with the evidence adduced in support of it, I am decidedly of opinion that Mr. Hastings ought to be acquitted of every part of the Charge. Your Lordships will consider *quo animo* the acts were done, which are alleged to be criminal; and I think you will agree with me, that Mr. Hastings acted highly meritoriously in every part of his conduct relative to Oude.

The Lord Chancellor said, it did appear to him that the Nabob shewed an unwillingness to resume the treasures and the jaghires of his mother; that as so much therefore of the Charge was in his opinion made out, he could not conscientiously acquit Mr. Hastings of all blame; but what he had said was merely to justify his own vote; and not from a view or an expectation of influencing the judgment of any one of their Lordships.

The Bishop of Rochester said, he could not give a conscientious vote of *Non-Content* to the question upon the proposition agreed to by both the Noble and Learned Lords, that the Minister of one country was not amenable to the laws of that country, if he procured an independent foreign Prince to do an act of injustice to one of that foreign Prince's subjects. Justice, in the eye of reason and morality, was due to every individual, whether the subject of a despotic Prince or a free government. He quoted the writers on the *jus gentium*, and in particular *Grotius*, to support his argument on that point. He then referred to his own notes of the evidence, to prove that the treasures in possession of the Bhow Begum were, excepting one eighth (which by the laws and customs of Mahomedans were her property, as the widow of Sujah Dowla), the actual property of the reigning Nabob, Asoph ul Dowla. His Lordship said, that the treaty, as it was called, of 1775 was actually usurious, and would have been set aside on that ground by any court of law in Westminster Hall. The resumption of the jaghires was in his opinion a measure of sound policy, and the only measure that could afford a chance

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of

of restoring order to so distracted a government as Oude. Whether the measure of seizing the treasures originated from the Nabob or from Mr. Hastings, made no sort of alteration, according to his view of the question. They had clearly forfeited their right to them. His Lordship then, from his notes, read extracts from some of the affidavits, and from the evidence given in Westminster Hall by Colonel Popham, Lieutenant Wade, Lieutenant Birrel, Captain Symes, Captain Grey, Mr. Shuldham, Captain Gordon, Captain Williams, and other Gentlemen, which contained, in his opinion, a body of proof not to be resisted. No doubt could remain as to the rebellious conduct of the Begums, acting in the only way they could act, through their agents. To take it on another ground, and that the strongest possible—the Nabob owed the Company a large debt: Mr. Hastings, as Governor-General, stood in the situation of the Nabob's principal creditor; he knew that the Nabob had sufficient to pay it in the hands of a third person, and he compelled the Nabob to take that property so unjustly held from him, and apply it to the discharge of his debt to the Company among others. What was there illegal or unfair in a creditor's pursuing such a line of conduct? The acts therefore were justifiable without resorting to the plea of necessity; but the necessity had been proved in the clearest manner, and his Lordship had no hesitation in saying that Mr. Hastings saved India by the measure which he adopted in Oude subsequent to the treaty of Chunar.

The question was then put on Lord Thurlow's motion. The *Not-Contents* were declared to have it, and the whole Charge was negatived by one vote.

FRIDAY, MARCH 20.

Lord Thurlow rose to lay before their Lordships the evidence as it appeared to him to apply to the Charge of Presents, stated by the Commons to have been received corruptly by Mr. Hastings in some instances, and in others in breach of an Act of Parliament. His Lordship said, that long before the return of Mr. Hastings to Great Britain, he certainly had formed a very high opinion both of his talents and of his successful exertions in the public service, during his very long administration; and he had fully declared his opinion of this Gentleman's character to their Lordships many

years ago. He had met with nothing, on a closer review of the particular measures of his administration, to induce him to change that opinion. But he confessed that he looked upon the Charge now before their Lordships as one which in all its parts deserved their most mature and careful examination. He freely admitted also that he disliked Presents; when offered as benevolences from persons of inferior stations to Princes (and in that character Mr. Hastings certainly moved while in India), they often merited the name of extortion; when tendered as Presents, they generally meant corruption. But at the same time that he called upon their Lordships to sift the evidence to the bottom, it was not necessary in such a Court, to caution them as judges to dismiss from their remembrance all that they had heard that was extraneous both to the evidence and the Charge. Inferences were not to be received, and he was sure they would not be received by their Lordships as substitutes for proof. It had been often remarked, that if it were possible to sift this business of the Presents, or if the evidence offered had been admitted, much more would have been discovered than has yet been brought to light. These observations were not to be attended to. Their Lordships would not be biased by the remark so often repeated, that Mr. Hastings might have received many more Presents than those which are noticed in the Charge. No: The Court would determine by the evidence, and by these inferences only which were fairly to be concluded from it. They were bound to believe, as the fact undoubtedly was, that by the industry of the prosecutors, and by the attention of the Defendant's Counsel, the whole truth was fully and completely before them.

The Article entitled Presents was divided into two parts, and the first clause in the Charge applied to the Present last received; yet the Commons had very properly pursued a different mode in bringing the subject before their Lordships. One year (1789) was employed by their Lordships in receiving evidence as to the Presents alleged to have been taken corruptly in the years 1772, 1773, and 1774.

The next year of the Trial (1790) was employed in adducing evidence to prove the receipt of Presents in the years 1780, 1781, 1782, &c. 1783; that is,

is, the Presents for which Mr. Hastings has accounted to the Company: so that, in the intermediate period of six years, it is not charged that Mr. Hastings received any Present whatever. In the first period, that is, between 1772 and 1774, Mr. Hastings is charged with receiving three lacks and fifty-four thousand rupees, as bribes for certain appointments which he made at Moorshedabad.

1772. He is also charged with receiving four lacks and forty-four thousand rupees from the Ranee Bowannee, who is the female Zemindar of Radhaee, and with appropriating to his own use forty thousand rupees a year from the salary of the Phousdar of Houghly. Your Lordships will observe that he is supposed to have taken all this money in the strongest sense of the words, *most corruptly*; as bribes or brokage for appointments to offices.

The sums taken at the latter period I shall now but barely mention, because they will require a separate consideration entirely. The first sum was the two lacks taken from Cheyt Sing in 1780, which, by the mode of its being entered upon the public accounts, did appear to be the property of Mr. Hastings. Whether, from circumstances which I shall not now go into, that sum was not so disclosed as to make it *bona fide* the Company's money the instant they took it, will be for your Lordships hereafter to determine.

The next is a receipt of two lacks from Patna, entered under the head of Durbar Charges, and received in April 1781.

The next is a sum of fifty-eight thousand rupees entered also as Durbar Charges, and it is followed by the large Present of one hundred thousand pounds, received from the Nabob Vizier by bills in 1781, which bills were not fully paid until March 1782. These sums were also entered under the head of Durbar Charges. By being so entered, they immediately became the property of the East India Company, and were open to any sort of investigation abroad or in England. Your Lordships will at once see that these Charges involve a very different case from the former. I shall not go into them at present.

The last is the Present from Nookissen, which being in some measure different from the three preceding Articles, will require a separate consideration also.

At the present moment I shall en-

tirely confine my observations to the evidence which applies to the case of the Presents alledged to have been received in the years 1772, 1773, and 1774; that is, to the Presents which Mr. Hastings is charged to have received for corrupt appointments to offices in Bengal, by which he added nearly one hundred thousand pounds to his private fortune. I will confess to you, my Lords, that when a Charge of this very serious nature was preferred by so great a body as the House of Commons, I conceived it to be most important indeed; I believed that those who framed the Charge were prepared to support it by some strong evidence that had recently been discovered. Your Lordships all know, that the Legislature has often re-appointed Mr. Hastings to the high office of Governor-General of Bengal subsequent to the period when the matter which forms this part of the Charge of Presents, had been very fully discussed in England. Your Lordships all know that in the year 1773 the Minister of that day held up Mr. Hastings to the view of the House of Commons as a man who was proof against that sort of temptation, which a very great character had publicly said the most virtuous man was not able to resist. It is nearly nineteen years ago since I was called upon in another situation to consider and to give my opinion on one of the material points in the Charge now under your Lordships consideration. I did not therefore conceive that facts which at that period were not deemed worthy of public inquiry, would, after the lapse of so many years, have been thought matter for Impeachment, unless, which I supposed to be the case, some strong and decisive evidence on the points alluded to had been discovered. In that case, I should have held the argument often urged, that twenty years had elapsed since the whole case had been referred to England, to have been fallacious and nugatory. No distance of time, no public service, no Parliamentary appointments, ought to screen a man from punishment, who, charged with the government of an empire, has taken bribes for official appointments. I have therefore, my Lords, looked with all the diligence in my power through the evidence which has been given in support of this Charge.

With respect to the Ranee Bowannee, from whom Mr. Hastings is accused of having extorted the large sum of

ten thousand four hundred pounds sterling, there certainly is not one tittle of evidence to support the charge, nor can I find even the name of this person mentioned in any part of the evidence. No evidence has been offered to support another allegation. Mr. Hastings is charged with receiving four thousand pounds a year from the salary of Khan Jehan Khan, who was Phoufdar of Houghly; but there is no evidence offered to support the charge, and consequently, on both these allegations, Mr. Hastings must be acquitted.

The only remaining Charge is, that in the year 1772, Mr. Hastings corruptly received three lacks and fifty-four thousand rupees, nearly forty thousand pounds, from Nundcomar and Muny Begum, for appointing the son of the former Duan, and the latter guardian to the Nabob of Bengal.

Your Lordships will recollect that one whole year was employed in Westminster Hall in this part of the Charge; I will endeavour therefore, as shortly as I am able, to lay before your Lordships the result of the evidence upon it, as it strikes my mind.

In the month of May 1765 Lord Clive arrived in Bengal, and brought with him positive directions to enforce the execution of certain covenants which the Directors had ordered their servants to enter into. By those covenants every man was bound not to receive more than one thousand rupees from any Prince, &c. in India without the consent of the Council, nor above four thousand rupees without the consent of the Directors. The Company, as the Charge asserts, adopted this measure in consequence of the extortions that had been practised under the plea of receiving Presents; and it is a singular fact, that after all the laudable industry exerted in the year 1772, by a Committee of the House of Commons, to discover the persons who had received Presents at the two great revolutions in Bengal, it did not appear that any Present was received by Mr. Hastings, tho' he had been confidentially employed both by Lord Clive and Mr. Vansittart. In addition to the covenants, Lord Clive, in the month of September 1766, proposed that every Governor should take a solemn oath at the Mayor's Court in Calcutta, that he would not take a Present for himself beyond the amount specified in his covenant. He gave to a Governor one and one-eighth per cent. commission on the revenues. He took the oath himself. Mr. Verelst, who succeeded him

in January 1767, took it also. But the Directors made a new arrangement, and gave the Governor thirty-one out of one hundred shares, in a commission of two and a half per cent. on the revenues. This totally changed the nature of the oath. Mr. Cartier succeeded Mr. Verelst in January 1770. He did not take the oath, and in April 1772, when Mr. Hastings succeeded Mr. Cartier, the oath itself was become obsolete, which was the expression used by a witness at your bar. The Managers, I think, wasted a great deal of time, and very unnecessarily, on this subject, in order to convince your Lordships, that Mr. Hastings had predetermined to do all those corrupt acts which they charge him with having done, and therefore evaded taking the oath. Now, my Lords, I really think that any man who could commit the crimes alleged against Mr. Hastings, would hardly hesitate a moment to add the crime of perjury to the catalogue.

Lord Clive acquired for the Company, as your Lordships well know, the Dewannee of Bengal in 1765. It was his policy to draw what advantages he could from this grant through the medium of a double government: in other words, he not only preserved all the Mahomedan forms, but he actually committed to Mahomed Reza Cawn the entire management of the revenues, and the administration of civil and criminal justice to the people. The British government protected the country by its army, and received into the treasury the public revenues that remained after paying twenty-six lacks a year to the Mogul, fifty-three lacks to the Nabob, and twelve lacks to his Minister Mahomed Reza Cawn, who enjoyed the high title of Naib Soubah. It was the earnest and pressing advice of Lord Clive both to his successor Mr. Verelst and to the Directors, that this system should remain entire in all its parts. He conceived that the intricacies in an Indian system of finance were not to be unravelled by Europeans, and that the form of the double government was necessary to keep down the jealousy of foreign nations.

This system continued from 1765 until 1772. Your Lordships well know that from various causes the promises of Lord Clive were not realized, and in fact, instead of Bengal yielding a balance of a million sterling a year in favour of Great Britain, the income barely sufficed to meet the expenditure. Under these peculiar circumstances Mr. Hastings was appointed to govern Bengal. Three or four

four days after he became Governor, in April 1772, orders of a very important nature were received from the Directors, and your Lordships will see that this detail is necessary to the complete knowledge of the case, because the present Charge originated from the manner in which Mr. Hastings executed these orders. He was directed, in concert with his Council, to destroy the whole fabric of the double government. He was to collect the revenues, and to take every measure connected with them, through the agency of the Company's servants. In short, he was to form a system for the government of Bengal, under instructions so general, that I may fairly say the whole plan was left to his judgment and discretion.

In addition to these orders, which necessarily involved the dismissal of Mahomed Reza Cawn from his office of Naib Soubah, a letter was written to Mr. Hastings himself, and which in the event of his death was not to be opened by any other person, directing him immediately to issue orders for seizing the person of Mahomed Reza Cawn, his family and dependents. He was further directed to order him to Calcutta, and to try him, on the charges of having embezzled the public revenues, monopolizing rice during the famine, and for leaving a balance unpaid, from the time of his having been the renter of the province of Dacca. Mr. Hastings was further directed to employ Nundcomar in detecting the malpractices of Mahomed Reza Cawn, and to afford him the degree of countenance necessary to effect this purpose. The Directors add, they were confident, that the perfect knowledge Mr. Hastings had of the man's character, would prevent him from giving him any improper degree of power.

In the execution of these severe orders, Mr. Hastings appears to have acted with every possible degree of tenderness and humanity. He wrote himself to Mahomed Reza Cawn, expressing his concern for his situation; and to the Gentleman who was entrusted with the charge of taking him prisoner, he recommended every kindness and attention that could be shewn to him, consistent with the literal and strict obedience of the orders. Mahomed Reza Cawn was brought down to Calcutta. Nundcomar was employed by Mr. Hastings; but the infamous means to which he resorted in order to convict Mahomed Reza Cawn were so apparent, that Mr. Hastings tells the Directors his

own character had suffered, he was afraid, by the support which he had given to Nundcomar; "however," he adds, "to your wishes I have sacrificed my own feelings." In the end, Mahomed Reza Cawn was fully acquitted; and though your Lordships have heard Mr. Hastings accused in Westminster-Hall of treating him with harshness and injustice, Mahomed Reza Cawn himself was sensible, as appears by the evidence, that he owed his honour and his life to the justice and impartiality of Mr. Hastings.

I will now state the plan adopted by Mr. Hastings for the future government of Bengal, in the adoption of which he provided for the son of Nundcomar, and exposed himself to the present accusation. It was determined that a Committee of the Council should proceed to Moorshe-dabad; Mr. Hastings was President of that Committee; he left Calcutta in May, and returned in September, having been about two months and a half at Moorshe-dabad. During his absence, he formed an arrangement new in all its parts. The lands were let on leases of five years. Courts of justice were established throughout the provinces; the seat of government was removed to Calcutta, with all the necessary offices, the records, &c. In short, in every measure taken by Mr. Hastings he appears to have acted systematically, and with a view of convincing the natives that the Governor and Council of Bengal would in future manage all the details of government.

In the course of the various discussions which necessarily employed Mr. Hastings and his Committee, they were to consider in what manner they were to obey the orders which the Directors had sent them, for appointing another Minister in the room of Mahomed Reza Cawn. The Directors had conceived such an appointment to be necessary as well for transacting occasional business with the Nabob, as to be the medium of communication with the French, Dutch, and Danish governments in Bengal. After very mature deliberation, and well considering how far a liberal execution of these orders would derange the new system of things, Mr. Hastings determined, and in my opinion with very great propriety, to disobey them; and so far the Managers have made good their Charge. He observed, that if any single Minister was to be appointed with a salary of three lacks of rupees a year, which was the order, it would convey an idea to the natives, that the office of Naib Soubah still subsisted; that it was unnecessary.

necessary for the mere purpose of being the channel of communication with foreign nations; and therefore he determined to divide this salary among three persons. Muny Begum, the widow of Meer Jaffer, was appointed guardian of the young Nabob, and superintendant of his household; Goordais, the son of Nundcomar, was appointed Duan, and Rajabullub, Roy Rayan of the Khalsa. The Board fully approved of two of the appointments; but, ignorant of the motives which induced Mr. Hastings to propose Raja Goordais, they opposed his appointment, on account of the notoriously infamous character of his father Nundcomar. The majority however concurred with Mr. Hastings, and all the appointments were confirmed. The Charge goes upon an idea, that Muny Begum was really intrusted with great power in the government of the country, and she is described in it as a person wholly unfit to govern the Nabob's dominions. The Manager who opened the Charge so argued it too; but the whole evidence proves the truth of Mr. Hastings's assertion when the appointment took place, that in fact she would have no authority beyond the walls of the Zenana. She applied to him for certain privileges heretofore enjoyed by the person acting as guardian to the Nabob. By allowing them, Mr. Hastings would have given her some power, and in language perfectly polite, he declined compliance with any of her requests. In his letter to the Directors, Mr. Hastings fully explains his reasons for all his actions: He tells the Directors that the uncle of the Nabob was the only person who could have had a superior claim to Muny Begum to the appointment in question, and his reasons for preferring the Begum are so clear, and indeed so unanswerable, that I am confident your Lordships will be convinced of the perfect propriety of his conduct. As soon as the Directors had received an account from Mr. Hastings of the various transactions which were crowded into the first six months of his administration, they sent him a letter of thanks, and expressed their complete approbation of all he had done, adding particularly, that they fully approved the appointment of Muny Begum. Your Lordships therefore will consider, that though the Commons have proved that Mr. Hastings disobeyed the Company's orders, it is proved also, that in their opinion he had considerably improved upon the plan which they had prescribed.

The arrangements thus approved were

submitted to the inspection of Parliament in 1773, and to the Minister of that day they appeared to do Mr. Hastings so much credit, that he proposed to nominate him the first Governor-General of Bengal under the regulating Act of that year.—The new government took place in Bengal in October 1774; and your Lordships have it in evidence, that the first three months were spent in discussing the political measures which Mr. Hastings had adopted in that and the preceding year. The unfortunate dissensions in the Council began, in fact, on the second day that the Board assembled.

But it was not until the month of March 1775 that any measure was brought forward which pointed at the private character of Mr. Hastings. On the 11th of that month, a letter was brought to the Board by Mr. Francis, which he said was delivered to him publicly by Nundcomar, who required him, as a Counsellor of the State, to deliver it to the Board, Your Lordships have all read the letter, and a more extraordinary, or a more insolent production never appeared undoubted, nor one which carried falsehood upon the face of it more strongly. After stating his services; the promises which Mr. Hastings had made to him, to induce him to discover the embezzlements of Mahomed Reza Cawn, which, he says, amounted to nearly three millions sterling; the breach of Mr. Hastings's promises; the enmity which he had since shewn him, and which he avows to be his motive for what he is going to relate; he strongly insinuates that Mr. Hastings had received immense sums from Mahomed Reza Cawn, Sittabroy, and others. He adds, "Having so far written generally, I now come to particulars"—and then he states that at various times in the year 1772, Mr. Hastings had received the sum of three lacs and fifty-four thousand rupees from himself, his son Goordais, and Muny Begum, in consideration of making the appointments which I have already mentioned to your Lordships. After the letter had been read through, the Board adjourned, Mr. Hastings having very properly, in my opinion, observed upon the singular circumstance of a member of the government presenting such a letter to the Council.

At their next meeting another letter was sent in by Nundcomar, desiring to be confronted with Mr. Hastings, and to bring proofs of his charges before the Board. In the same letter he tells the Board that he had warned former Go-
vernors

vernors of the consequences of attending to their own interest, and not to that of the Company. It is impossible to read such a letter, and the proceedings which followed, without admitting that there was at least much indiscretion in the conduct of the majority, who wished to call Nundcomar before the Board. Mr. Hastings declared that he would not sit at that Board, the first British subject in India, to be confronted with such a miscreant as Nundcomar; that the proposition was made with a view to insult, to degrade him, and to proclaim the annihilation of his power to all Indostan; but he added, which is very material to consider, that in a Committee of the Board they might hear all that Nundcomar had to say, and they might institute any process they pleased. The Board persisted, and Mr. Hastings declared the Council dissolved.

Here the evidence ends. What passed after Mr. Hastings had dissolved the Council, your Lordships, as judges, cannot know, except in so far as the proceedings are alluded to in those letters from Mr. Hastings and the majority to the Company. But it is an historical fact, which perhaps I may fairly be allowed to mention, that all the information given by Nundcomar to the majority was submitted to the Law-officers of the Company in Bengal, who did not recommend any prosecution in India, but advised the Board to transmit every paper, and all the evidence, to the Company, who might, if the matter were worthy of their notice, file a bill against Mr. Hastings, and compel a discovery. These documents arrived at a time when it certainly was the anxious wish of the Minister to take any fair and reasonable ground he could for the removal of Mr. Hastings. The papers were all submitted to the Law-officers of the Company, who declared that the information of Nundcomar, even upon the *ex parte* case before them, could not possibly be true. The reasons for that belief were assigned at length. The Directors, though a majority of them were very well disposed to oblige the Minister, concurred with their Law-officers, and all that rubbish and trash remained unnoticed from 1776 to the year 1789; when, as your Lordships know, it was repeatedly presented upon you by the Managers, as containing proofs of the corruption of Mr. Hastings, and it was very properly rejected by the Court. It was never pretended by the Managers, that they had evidence to go *step beyond this rejected in-*

formation of Nundcomar: And here, Lords, I cannot avoid saying—Hard fate of Mr. Hastings!!—The gentlemen of the majority were so indiscreet, so far I think I may say, as to write to the Directors in March 1775, that though Mr. Hastings then called Nundcomar a miscreant, he had been high in his confidence, and closely connected with him before their arrival: I say it was indiscreet, my Lords, to send such intelligence to the body, in obedience to whose commands alone it was owing that Nundcomar was employed at all, or even admitted into the presence of Mr. Hastings. To send such a letter to a body who had been told by Mr. Hastings above a year before, that he had every thing to expect from the malignity and disappointed ambition of Nundcomar, who had hoped to rise on the ruin of Mahomed Reza Cawn—I say, my Lords, the fate of Mr. Hastings was hard indeed. Placed as he was by the Directors in the sacred character of a judge, he took every possible means to determine fairly and justly on the accusation against Mahomed Reza Cawn. The acquittal gave general satisfaction, though Nundcomar imputed it to the basest corruption.

I come now, my Lords, to the next point in this Charge on which your Lordships must decide: It is fully proved—Mr. Hastings himself never denied the fact—I mean the receipt of a lack and a half of rupees for *zeafut*, a Persian word for entertainment, which was paid to Mr. Hastings from the treasury of the Nabob, and entered on the public accounts of his treasury in the year 1772.

It is necessary to state the circumstances which led to the discussion of this subject; they are curious, and shew the unhappy spirit which prevailed at that time in the Supreme Council.

In the month of May 1775, a man employed in the treasury by the Begum, brought a number of accounts to an English gentleman, and by those, he said, it would appear that part of the Nabob's money for many years past had been embezzled. The information having been given to the Supreme Council, they immediately divested the Begum of her appointment, and deputed Mr. Goring to Moorshedabad, to seize all her papers, containing the accounts of the Nabob's expenditure from the year 1764 to 1772. This gentleman was to deliver over the accounts, after he had seized them, to three Commissioners. Soon after his arrival at Moorshedabad, he sent a letter

of two lines to the Board, inclosing a written declaration from the Begum, that she had paid a lack and a half of rupees to Mr. Hastings. His conduct on the receipt of this information was exactly what any man would have held. He expresses his surprize that Mr. Goring, who was entrusted with a limited commission, and that commission not to examine accounts; but to deliver them to others, should have selected this item for transmission. He desires the Begum to be asked if the sum was paid by agreement, by application from him, or in consequence of established usage and custom? The answer is clear and decisive. Every Governor, he says, coming to Moorshedabad received two thousand rupees a day in lieu of provisions; beyond that she had not given a single cowrie, and every payment would appear upon the record. Now, my Lords, as the record alluded to was in the possession of Mr. Goring, and was to undergo a close inspection by three Commissioners, it is absolutely impossible to believe that Mr. Hastings did receive any other sum beyond that which he never for a moment denied that he had received. Mr. Goring speaks out fully, and with great sincerity explains the business. Mr. Hastings had requested that he might be desired to account for so partial a selection. Mr. Goring, in reply, on the 3d of June said, the Begum gave the account, on being earnestly pressed by him to state how the deficiency arose. He humbly begs pardon of the Board if he has exceeded his duty, but adds, "The extraordinary confidence you were pleased to repose in me, and the unlimited power attending it, moved me to exert myself to the utmost, that the intent of my appointment might not be entirely fruitless."

Now, my Lords, after this frank and plain declaration, your Lordships must all be convinced that the real object of Mr. Goring's appointment was to obtain for the majority a full account of all the sums which Mr. Hastings had received at Moorshedabad; your Lordships must also be fully satisfied that the only sum which Mr. Hastings did receive, was two thousand rupees a day, for subsistence or entertainment, agreeably to established usage.—The Managers affirm in the Charge, and have so argued it, that this was a sum received for an appointment to office, and if it were so received, it is a crime of a most serious nature, deserving the marked condemnation of your Lordships. But I cannot find one line of evidence on the

prosecution which invalidates the declaration of the Begum, that it was given agreeably to established usage.

Colonel Monson says, he has heard that it has been an established usage, for persons of distinguished rank, when resident at the courts of Eastern Princes, to have large sums of money paid them for their table expences; that Mr. Hastings can satisfy the Directors whether he did so receive this sum, or whether he has charged his expences to the Company while he was at Moorshedabad.

Now, my Lords, the Managers have given evidence to prove that the travelling expences of Mr. Hastings and his suite to and from Calcutta were paid; the whole amount does not exceed three thousand pounds; and there is also a general charge for the Committee of Circuit, which cannot be applicable to Mr. Hastings. It is perfectly clear therefore that the expences of Mr. Hastings while at Moorshedabad were not defrayed by the Company. The evidence for the Defendant carries the matter but one step further. It relies on the Begum's declaration that all Governors received a similar allowance, and the Council prove that as often as the Nabob was in Calcutta, he received from the Company one thousand rupees a day for subsistence. But in the evidence in reply the Managers for the Commons fairly and candidly, and much to their honour, produced evidence which the Counsel of the Defendant, with all their industry, had not been able to discover. The Auditor of the India House being called by the Managers, read from a book of public accounts, a statement of the allowances made to Lord Clive first, and next to Mr. Verelst, when they were at Moorshedabad as Governors; and no doubt therefore can remain as to the truth of the Begum's declaration, that every Governor, while at Moorshedabad, received the same allowance as Mr. Hastings. With this body of evidence before you, I do not believe that any one of your Lordships will think that the Commons have made good any part of the Charge of Presents stated to have been corruptly received in the years 1772, 1773, and 1774. The payment now in question is expressly charged to be a bribe. The evidence certainly disproves the Charge.

But the Commons have given evidence to shew the partiality of Mr. Hastings towards the Begum, from whence they would infer some corrupt understanding between them. It no-where appears in

the evidence that she had embezzled any part of the Nabob's money. All will appear, she says, upon the records, and she seems to be completely justified.—Your Lordships heard, and with much pain, I am sure, a great deal of coarse invective uttered against this lady. She was described as a dancing girl—a common prostitute—a dealer in spirits; and many other epithets were applied to her, which I shall not enumerate; but I certainly have taken some pains to trace, as far as I could, both from the evidence and the history of the times, the real situation of this lady. I find that the only authority on which she has been called a dancing girl by the Manager, is a letter written from a man of the name of Nuned Roy to General Clavering, in which he tells the General, "Every day's news is transmitted to you"—and then he incloses a paper, which contains what he calls the history of Muny Begum; stating that her mother being poor, she sold her to a mistress of dancing girls; that she came to Moorshehabad, danced before Meer Jaffer, who took her to his house, where she became the mother of the Nabob Nudjum ul Dowlah—Here the story ends. This young Nabob died in 1766, above the age of twenty; so that, if credit is to be given to any part of the intelligence of Nuned Roy, Muny Begum has been at least half a century in a very elevated situation. She was a woman of high rank when we were mere merchants in Bengal. Lord Clive describes her so far back as 1765 as the widow of Meer Jaffer, and upon the credit of her testimony he received a legacy of five lacks of rupees as a bequest from her late husband Meer Jaffer, which the Noble Lord appropriated as a fund for the half-pay of the Company's officers and soldiers. In her testimony she states that Meer Jaffer her husband had expressly directed her to pay this money to Lord Clive on his arrival in Bengal, and, after receiving her own settlement, to distribute the remainder in the manner he had directed. Your Lordships will find this transaction fully detailed in one of the Reports of the House of Commons.

It appears from the evidence, that in 1771, Mahomed Reza Cawn, giving an account to the Governor of the wives of Meer Jaffer, represents the deceased mother of Meeran as the first and most respected amongst them. He then mentions Muny Begum as the next; but her son,

PART VII.

who was Nabob of Bengal, being dead, and the mother of the reigning Nabob still alive, it was proper, in Mahomed Reza Cawn's opinion, that these two ladies should be deemed of equal rank. Your Lordships see by the evidence in what light she was esteemed by Mr. Hastings and his Council. The Directors ordered her to be dismissed from the office, to which Mr. Hastings reappointed her, at the express application of the Nabob in 1778. She was accordingly removed in 1780; and the next evidence respecting her, is a letter from Mr. Hastings to the Directors, dated in November 1783, inclosing a representation from the Begum of the situation which she had filled, the respect in which she had been held in Bengal for so many years, and the hardships which she had sustained in consequence of the unfortunate differences in the Supreme Council. This letter was produced by the Managers; and a more temperate, affecting, and dignified letter I never read. It proves that, whatever situation she may have filled in very early life, if it be true that her origin was low, she was well calculated to sustain with the utmost decorum and propriety the high rank to which she had been elevated by Meer Jaffer. Time having softened those prejudices by which this lady had so severely suffered, the Court of Directors, with a humanity and a sense of justice which well became them, referred this representation to Lord Cornwallis, from a conviction that the Noble Marquis would determine upon the merits of this lady with the strictest impartiality; and accordingly, my Lords, it appears in evidence, that a pension was settled upon her of ten thousand rupees a month, about twelve thousand pounds a year; which was within a mere trifle of the extent of her request. Thus, my Lords, has this lady received some compensation for the injuries which she had formerly sustained; and after having held the rank of the first woman in Bengal for near forty years, the wife of one Prince, the mother of another, and the guardian of two other Princes; after having seen her husband the absolute Sovereign of Bengal, and the family of her husband originally receiving fifty-three lacks of rupees a year, which has now been brought down to sixteen; she will at least have the satisfaction, in her latter days, of being relieved from every apprehension of personal wants, or personal indignities.

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Your

Your Lordships, I hope, will excuse me for having detained you so long on this part of the case. You will recollect that the Commons deemed it so weighty and important, that they employed four days in opening it in Westminster Hall. I have examined all the evidence with the utmost attention of which I am capable, and I am convinced that it is absolutely impossible for your Lordships to determine that the Commons have made good any part of the Charge. The lack and a half of rupees, it is clear, was not received as a bribe for an appointment to office; consequently it is not that crime which the Commons charge. It was a compliance with an established usage, and would have been received equally, if no arrangement had been made in 1772. I have been the more particular also, my Lords, in summing up all the evidence in this case, because the Manager [Mr. Fox], who replied on this Charge, and of whose acuteness and abilities I have a very high opinion, professed himself to be convinced that the Commons had proved the charge of corruption in this instance most completely. I will not detain your Lordships longer than to move, "That the Commons have made good the Sixth Article, as far as it relates to a corrupt receipt of three lacks and fifty-four thousand rupees in the year 1772."

The Lord Chancellor said, he should detain their Lordships but a very few moments, not meaning to go into the circumstantial detail that the Committee had heard so ably stated by the Noble and Learned Lord. He was perfectly ready to admit that the Commons had totally failed in making good any part of the Charge except the receipt of the lack and a half of rupees which Mr. Hastings had admitted to be true; and even though the fact of his having received the lack and a half was proved, yet there certainly was no proof that Mr. Hastings had received it as a consideration for an appointment to office, which he concurred with the Learned Lord in thinking would have been a crime of a very heavy nature indeed. He was induced to think that if this Article had stood alone, the Commons would not have charged it. It was mixed with others, of which, under their Lordships rules, no evidence could be given. It had been distinctly proved by the Managers, that

it was usual for Governors to receive two thousand rupees a day while at Moorshedabad; and the money paid first to Lord Clive and next to Mr. Verelst, on the same account, was in evidence. As there was no ground therefore to believe that Mr. Hastings had prolonged his stay one day at Moorshedabad with a view of putting two thousand rupees in his pocket, he certainly should concur with the Noble and Learned Lord; but he confidently hoped that this practice, which however custom might have justified in some degree, no longer obtained in India. He would propose, in preference to the Learned Lord's motion, to put it, "That the Commons had made good the Sixth Article, as far as it related to a corrupt receipt of Presents in the years 1772, 1773, and 1774."

Lord Thurlow consented to the amendment. The motion was put and negatived, *nemine dissente.*

MONDAY, MARCH 23.

Lord Thurlow rose to state to their Lordships the nature of the second division of the Charge of Presents, and to adduce the evidence which had been given upon it by the Managers and the Defendant's Counsel.

He observed, that the last day on which the Committee sat, their Lordships had determined, *nemine dissente*, that the Commons had not made good the first branch of this Charge, namely, the receipt of considerable Presents for brokerage and bribes for the sale of offices, the most odious and disgraceful species of corruption that could be charged against a public man.

The present accusation, says Lord Thurlow, is in its nature very materially different. We are now to consider Mr. Hastings's conduct in receiving Presents, between the years 1780 and 1784, to a very large amount, for the use of the Company, as he contends; but, as the Managers in argument have contended, for his own use; though at a subsequent period, as they say, fear induced him to apply them to the public service.

If the Managers have succeeded in proving that Mr. Hastings received these Presents, intending to apply them to his own use, then Mr. Hastings must be found guilty, and will be punished, as he very well deserves to be. But on the other hand, if your Lordships shall

shall be of opinion that he *bona fide* intended, at the time the several Presents were received, to apply them in the manner they actually were applied, to the public service, then you will have to consider the construction which the Managers have put upon the Act of 1773, by which, as they say, it became criminal to receive Presents for the Company's use. You will also have to consider whether the mere breach of that statute could now be a matter of impeachment, since the clause relative to the receipt of Presents was repealed in 1784.

I do not recollect that the Manager [Mr. Fox] who summed up this Charge on the part of the Commons laid that particular stress on the breach of the law at that period, which he did in summing up the evidence in reply, when it was very strenuously contended, that Mr. Hastings must be convicted upon the breach of the law, even if your Lordships should be of opinion that each Present was received with the clearest determination to appropriate it to the use of the Company. It was also contended, and evidence was brought to prove, that Mr. Hastings, in receiving these Presents, had acted against his own recorded opinion of the true sense and meaning of the Act of 1773. Now, my Lords, it has happened in this instance, as it has in so many others, that the evidence produced did in fact prove the reverse of the Manager's assertions. It appears very clear to me, that Mr. Hastings and the Council in Calcutta, and the Directors and his Majesty's Ministers at home, construed the Act in this way—that British subjects in India might receive Presents for the Company's use, though they were interdicted from receiving them for their own use. This appears perfectly clear from what actually passed relative to a Present from Sujah Dowlah to a brigade of British forces in the year 1774. Mr. Hastings said, that the Act actually precluded the officers from accepting that Present, but advised its being received as a deposit in the Company's treasury; and he promised the Army to recommend their case strongly to the Court of Directors. The Present was received from Asoph ul Dowlah, lodged in the Company's treasury, and distributed by an order of the Court of Directors, which order was approved by the Board of Controll, while the Noble Lord who now sits in the Chair at your table

was a member of that Board, and his name appears to the letter of approbation.

It will not therefore be contended here, tho' it was in Westminster Hall, that Mr. Hastings has held two opinions as to the true intent and meaning of that Act. He took Presents every year of his government, either of small amount or to a considerable value, and brought them to the Company's credit.

The Presents which yet remain to be considered differ in some circumstances: I shall therefore follow the rule so wisely laid down by your Lordships, and take them up separately.

The first is the Present from Cheyt Sing, received in June 1780. Your Lordships will see that this Present is entered as a deposit in the Company's books; that is, as a sum at the command of Mr. Hastings, and making part of his private fortune. Now, my Lords, Mr. Hastings must be convicted on this head, unless, on a fair and full view of all the evidence, it shall be made out, to the satisfaction of your Lordships, that he really made that sort of disclosure of this Present as soon as he had received it, as absolutely precluded him from the power of converting it to his own use. I will endeavour, as shortly as I can, to state the effect of the evidence to your Lordships as it strikes my mind.

In the month of June 1780, Mr. Hastings proposed to the Council the plan of an expedition into the province of Mitha. He expected by this expedition to draw Madajee Scindia from Guzerat to the defence of his own dominions; and in that event it would have been a very powerful diversion in favour of General Goddard; or that it would produce the ultimate object which Mr. Hastings hoped to attain by the expedition—a peace with the Marattas, to which he supposed Scindia would be averse, as long as he was himself at the head of the Maratta armies, and as long as his own dominions should remain uninvaded. This plan was opposed by Mr. Francis and Mr. Wheeler, who formed the majority, notwithstanding the very uncommon earnestness with which Mr. Hastings entreated them to leave the conduct, as they had thrown the responsibility, of the Maratta war upon him. At the close of his proposition, he uses these remarkable expressions: "I wish I could stake my life on the success of the expedition." Whether it would

have been better for the majority to have submitted their opinions to that of Mr. Hastings, cannot be a matter of doubt, because the expedition did take place at a period somewhat later, and did actually produce all those beneficial consequences which Mr. Hastings had predicted from its adoption.

It appears from the evidence, that, after this proposition was rejected, Mr. Hastings sent for the Buxey of Cheyt Sing, who had offered him a present of two lacks of rupees some time before. There is some difference in the statement of the ground on which this Present was offered. Mr. Larkins says that it was offered on a plea of atoning for the past misconduct of Cheyt Sing, though really with a hope of its inducing Mr. Hastings to waive in future the demand of the subsidy. Mr. Hastings in his Defence says, that he fully explained to Sadanund the propriety and justice of the war-subsidy; that he told him it never would be given up while the war lasted; but on the restoration of peace this extra payment would no longer be demanded. He says, that he received the fullest assurances in the name of the Raja from Sadanund of strict obedience in future, and an offer of a Present of six lacks of rupees accompanied by apologies for his former ill behaviour. Mr. Hastings goes on to say, that he cordially accepted his apologies, but declined the Present. On the refusal of the majority to consent to the proposition of Mr. Hastings, it appeared to him that the only objection urged against the measure was the extra expence which would be incurred by it. On his return therefore from the Council he sent to Sadanund and told him he had reconsidered his master's offer, would accept the money, and desired him to pay it to Mr. Larkins. He requested Mr. Larkins to receive it, to send it to Mr. Crokes the treasurer, and he informed Mr. Larkins that it was a sum that had been offered to him, and which he accepted for the Company, in order to remove the objections which had been urged by Mr. Francis and Mr. Wheeler to the expedition against Malwa.

This was on the 21st of June; on the 26th Mr. Hastings again submitted the subject of the expedition to the consideration of the Board, and with a degree of earnestness that must convince your Lordships it was a point, in his opinion, on which the fate of India

depended, as in fact it did. In his minute he tells the Board, that they do not appear to have offered any reasonable objection to the plan, except that it would be attended with considerable additional expence.

"The objection made to the expence" (says Mr. Hastings), "is a material one; but a vigorous exertion cannot be made without expence, nor can the war be concluded honourably" or prosecuted successfully without "such an exertion. Feeble measures, and advances for peace, will but add to the strength and presumption of our adversaries, discourage our friends, and perhaps induce them to become parties against us."

In another part of his minute he says, "The part which this Government has hitherto borne in the war is mine; the other members having repeatedly disclaimed their share in the responsibility attending it. It is hard, that while they load me with the weight of such a charge, they should bind my hands, and deny me the means of supporting it."

He concludes his minute by stating, that whether the troops which he proposes to employ in the invasion of Malwa are in the field or in cantonments, their pay must be the same; that the contingent expences therefore are all which can fairly be charged to the expedition. Those contingencies he rates high when he supposes they will amount to two lacks of rupees: that sum, he says, he is desirous to contribute to carry his measure, to which he hopes there can no longer be an objection; and, he adds, that he has already deposited it, within a small amount, in the hands of the sub-treasurer.

The majority still persisted in their opposition; and there is a circumstance which ought to follow in the evidence, but by some accident it does not, and therefore I shall state it, not as making part of the case, but leaving it to your Lordships to give the circumstances what consideration you may think they deserve: Mr. Markham was examined in Westminster Hall on this Present: he declares himself to have been privy to it at the time, refers to the evidence which he had given on the subject in the House of Commons, and says it would save time if that were inserted as his answer. I presume that a copy of the evidence given in the House of Commons was not at hand.

The Commons went to another head of examination, and it is left in this imperfect way upon your Lordships' minutes. I have looked at Mr. Markham's evidence before the House of Commons, and I find that he very fully details the communication made to him by Mr. Hastings relative to this Present. The conversation happened immediately after the rejection of Mr. Hastings's last proposition to the Council, and he expressed his concern to Mr. Markham that he had accepted the Present from Chyeet Sing, since he could not now make the use of it he intended. It was by an accidental omission of all the parties, as your Lordships must perceive, that the complete evidence is not upon your minutes. The next communication of this Present, my Lords, was to Mr. Sullivan, and it was sent by a foreign ship in August 1780, with liberty to Mr. Sullivan to make any public or private use of it he pleased. From all these circumstances, which are in evidence, I think it appears most clearly, that Mr. Hastings never had the most distant idea of appropriating this money to his own use.

There was a fourth communication which Mr. Hastings supposed he had made of this Present, though, in point of fact, he had not made it; but in the way it strikes me, it gives great weight to the preceding evidence. Major Scott received a letter from Mr. Hastings, dated the 7th of December 1782, some time in the month of May 1783, and he underwent a very long examination before the Select Committee of the House of Commons, which, by the desire of both parties, was read to your Lordships. It appeared, that on being asked whether he knew from whom the several sums were received that Mr. Hastings had accounted for to the Company, he said that one of the sums was from Chyeet Sing; and he read a part of a letter from Mr. Hastings to him, in which he says, "You may remember the two lacs which I received from Chyeet Sing to defray the expence of Camac's detachment." Major Scott deposed before your Lordships, that no communication had been made to him of this Present, because he had left Mr. Hastings's family at the time it was received, and was on his way to Chunar. I infer from this, that Mr. Hastings had no conception of keeping the matter secret; that supposing Mr. Scott to have been in his family at the time the Present was re-

ceived, he conceived he had communicated it to him, as he certainly would have done, had Mr. Scott been at Calcutta at the time.

Your Lordships will find, that the next communication of the Present was made in a letter from Mr. Hastings, to the Court of Directors, dated the 25th of November 1780. The observations which were made upon this letter, both on the part of the Managers and the Counsel for the Defendant, will lay me under the necessity of detaining your Lordships some little time on this very material part of the case. When Mr. Hastings offered to pay two lacs of rupees for the extra expences of Major Camac's detachment, his offer was so worded, that his Council would naturally suppose he meant to give this money from his own private fortune. It was absolutely necessary for him, therefore, to order the money to be entered as a deposit; but to the Directors, in this letter, he says, "The money was not my own," and I neither could nor would have "received it but for your benefit." Now, my Lords, you will determine whether, after the various communications which Mr. Hastings had made of this Present, it was possible that he could have had an idea of converting it to his own use; because he had ordered it to be entered as a deposit, if he did so order it; or because, without any special directions from him, it was entered as a deposit, in his name, in the Company's books.

I will now proceed to the other parts of this letter of the 29th of November 1780. The Managers produce it in the front of their evidence, for the express purpose, as they say, of falsifying it in all its parts—an expression rather rash and ill-considered. It is a very long and important political letter, representing, in very forcible language, some very interesting circumstances. The first paragraph of the letter I have already mentioned. It goes on to state the alarming situation of India at that moment—the measures he had taken to repel the dangers that surrounded them; and then he mentions the circumstance of thirty thousand horse being on the western frontier of Bengal. He tells the Directors, what subsequent events proved to be true, that though Moodajee Borsla was compelled to join the confederacy against the English, he was really so far from being hostile to the Government of Bengal, that nothing but the last ne-

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cessity would induce him to proceed to extremities against us. He represents the distress which so large an army had suffered from the want of pay, and the danger, under such circumstances, of any accidental commencement of hostilities. After full consideration he says, that he had taken upon himself to send three lacs of rupees privately to the Commander of this army, who was the son of Moodajee Boosla, and he had promised him a larger sum provided any service was performed by the army which should justify him in relieving their wants. Your Lordships will remember, that a very large detachment was at this moment on the point of proceeding to Madras, and their route lay through that part of Moodajee Boosla's territories in which this body of thirty thousand horse were then encamped, professedly for the purpose of invading Bengal. Mr. Hastings goes on to state, that though he could carry the point of sending this supply of three lacs in Council, yet he knew he could not carry it without opposition; and therefore he had sent the money privately, and had taken the entire responsibility upon himself. When the Managers said they meant to falsify this letter in all its parts, it was natural to expect that some evidence would have been offered to disprove all these important communications. Mr. Hastings proceeds to state, that of the supply of three lacs thus sent to the Berar army in Cuttack, he had raised two thirds by his own credit, and had supplied the other third by cash in his hands, belonging to the Company. Now, my Lords, this was undoubtedly a mistake, and a mistake which a more cautious man would not have committed. Whether in common candour it should not have been deemed a mere mistake, and excusable in a man writing without accounts before him, when his whole mind was engaged on subjects of the utmost importance to the British interests in India, your Lordships will determine. The fact was, that two thirds of the supply sent to Moodajee Boosla was money in his hands, belonging to the Company, and the other third was money raised on his own credit; that is, his own money, because, if he borrowed it, he made himself accountable for the sum borrowed. The Managers have not to your Lordships any possible motive which Mr. Hastings could have had for practising this deception; nor have they observed, that if Mr. Hastings himself had not corrected the blunder, it would not have been so likely to have out-

covered it. In good truth, I should suppose that the real motive for reading this letter at all was, to introduce the story of the Bonds, which not being in charge could not have been introduced but under this sort of cover. So much has been said of those Bonds, that, though nothing which has a relation to them is in charge, I shall endeavour to state all that appears on the subject.

For three lacs sent to the Berar army the 3d of October 1780, Mr. Hastings, on the 5th of January 1781, applies to the Board for three Bonds, as if they were all his own property. He desires to have Bonds for two lacs, on a loan, bearing an interest of eight per cent. the principal and interest payable in Bengal. This was, in fact, the Company's money, being the Present he had received from Dinagapore, which is not in charge. For the third Bond, which was his own property, he desires a Bond to be liquidated by bills upon England, payable in five years, and which the Managers have proved were duly paid to his Agents in England. Mr. Hastings took another Bond for one lac and a half of rupees, being the amount of a Present which he had received from Nuddea, and paid into the Company's treasury on the 23d of November 1780. This Bond is not in charge, but I mention it because the observations made on the two Bonds for the Dinagapore peshcush apply to this also; and they are all included in the account which accompanied that letter of the 22d of May 1782, which is in evidence; and having been the subject of so much animadversion, I will endeavour to state the whole as distinctly as possible.

Your Lordships will remember, that in the letter of the 29th of November 1780, Mr. Hastings told the Directors that he had received two lacs of rupees in June, which he had deposited in the treasury. This was the Present from Chyot Sing. On the 20th of January 1782 he wrote to the Directors that he had received a Present of ten lacs from the Nabob Vizier, in September, by bills, which had been in part realized, and expended in the public service. He assures the Directors, that the remainder of that Present, when received, shall also be expended in the public service. He returned to Calcutta on the 22d of May 1782, by which time the whole of the Present had been received; and on the 22d of May 1782 he writes a letter to the Directors, in which he gives an account of all the Presents that he had received. These consist of two lacs from Dinage-

Dinapore, one and a half from Nuddeah, two from Cheyt Sing, two from Patna, ten from the Nabob Vizier, and fifty-eight thousand rupees from Nundoolol. These several sums, when converted into current rupees, make something more than nineteen lacs, or about two hundred thousand pounds sterling. He informs the Directors that these sums were taken at times when the Company very much wanted them; that none of them passed through his hands; that for the first sums (Dinapore and Nuddeah) he had taken Bonds.—He says, if he were asked why he took Bonds for those sums, he should answer, that he took them in order to conceal the receipt from public curiosity; or possibly acted from any studied design which his memory, at that distance of time, enabled him not to state. The departure of the Packet by which this letter was intended to go, was delayed from May to December, in the daily expectation of receiving from Poona the ratification of the Maratta peace. In the intermediate time, that is, between May and December 1782, when the Packet did actually sail, Mr. Hastings received an account from England of the strange proceedings which had taken place here; for your Lordships will recollect, that early in May 1782, a Resolution was moved and voted in the House of Commons, “That it was the duty of the Directors to remove Mr. Hastings from the Government of Bengal, on an idea that he had forfeited the confidence of the Princes in India.” This Resolution the Proprietors had the manliness and the good sense to resist; and they have since had the satisfaction of hearing their resistance applauded by the Gentleman [Mr. Dundas] who made the motion for the recall of Mr. Hastings, who declared in his place in the House of Commons, that by resisting his Resolution, the Proprietors had preserved India to Great Britain. To obviate the suspicion of having been induced, by the events which had happened in England, to discover the receipt of these Presents, the letter of the 22d of May 1782 was opened, and an affidavit, sworn by Mr. Laikins, before one of the Judges in Calcutta, was put into it, which proved that the letter and account were both written on the 22d of May, on an idea that the Packet would sail immediately. Mr. Hastings writes another letter on the 16th of December 1782, in which he tells the Directors that the affidavit is sent with the letter for the purpose which I have mentioned; and he

says in this last letter, that the sources from whence these supplies, so necessary for their service, were obtained, could have been obtained in no other way; that if he had had a wrong motive (meaning obviously if he had meant to put the money into his own pocket), he could have concealed the receipts from their's and the public eye for ever. He adds, that if he has been wrong, he gives up that security, which those enjoy who commit crimes or errors; he is ready to answer any question which the Directors may put to him, upon honour or upon oath. This letter reached England in the month of May 1783, and no notice was taken of it to Mr. Hastings, though the subject of much remark, and of one very long Report to the House of Commons, until the 16th of March 1784, which was after the India Bill of Mr. Fox had been thrown out, and then, under a new Administration, a letter was written to Mr. Hastings, by the Directors, in which they tell him, that they do not doubt his integrity; on the contrary, that having received these Presents, they approve or his having paid them into the Company's treasury: but, as he had voluntarily offered to answer any questions, and as the account was in many parts unintelligible to them, they desire to be informed at what periods the several sums were received; why he concealed the receipt from the Council and the Court of Directors; and why he entered some of the receipts under the head of Deposits, and took Bonds for other sums.

This letter arrived in Bengal in the month of September 1784, when Mr. Hastings was in Oude. He returned to Calcutta on the 5th of November, and quitted India on the 9th of February following, without replying to this letter; and in candour your Lordships will believe, when you consider the multiplicity of business which he had to transact prior to his resignation, that he really had not adverted to this particular paragraph. He landed in England in June, and went soon after to Cheltenham. Being reminded by Major Scott that he had not answered this particular paragraph, he wrote a letter from Cheltenham to the Directors, replying to the three questions which had been put to him. This letter also has been very much commented upon; but your Lordships, weighing the whole as honourable and impartial judges, will not forget that he wrote on matters of account, without an account to refer to, in reply to a letter of the Directors, and not in reply to

to that Article of Impeachment which was preferred against him two years after. He tells the Directors, that as far as he can recollect, he will inform them; that if the information which he gives is not sufficient, he refers them to Mr. Larkins for further information on the points they had mentioned, as the channel for making any further investigation they thought proper, as that gentleman was acquainted with the whole transaction. He says, he believes the sums were received at or very near the time they were paid into the treasury, but that Mr. Larkins will be able to answer the question exactly, as he possesses, according to his belief, the only memorandum which he ever kept of the transaction. This was an answer to one question. To the second, he says, he really does not know why a sum was entered as a Deposit, possibly without any directions from him, as he had avowed the transaction to them on the 29th of November 1780, that is, Cheyt Sing's Present.

Why he took Bonds for two of the sums (that is, the Dinagapore and Nuddeah Bonds) he cannot say more particularly than he had already done. But he is confident that he intended to conceal all the receipts from them, until the magnitude of the sum received from the Nabob made it impossible to conceal that Present. He then answers a question which he supposes they might have asked—That prior to July 1780 he indorsed the three Bonds, to prevent their being a charge upon the Company in the event of his death. With this information it appears, my Lords, that both the Directors and the Board of Controul were satisfied, for they made no further inquiries. But Mr. Hastings, anxious to give as complete an answer as he could to the questions which the Directors had asked him, wrote himself to Mr. Larkins, and requested him to send to the Chairman that memorandum which was in his possession, and which contained an account of the periods when the several sums were received. This application to Mr. Larkins produced the letter of the 5th of August 1786, and that account was inclosed in it, upon which your Lordships have heard so many comments in Westminster Hall. And here I cannot avoid making an observation which I am sure must have occurred to your Lordships, and to which every

honourable man sitting as a judge will give the attention it deserves. Though this subject of the Presents has taken up so many years in the discussion, the Managers have never been able to this moment to procure a title of evidence beyond what Mr. Hastings himself has furnished them with. I own, when I consider all that has happened in the last twelve years, I am much struck with that part of Mr. Hastings's letter to the Directors, of the 10th of December 1782, in which he tells them, "If I had had a wrong motive, I could have concealed the receipt of these sums from your's and the public eye for ever."—I believe the assertion to be strictly true.

I have but one subject more to mention, and though not at all applicable to any matter in charge, it was dwelt upon with so much force by one of the Managers [Mr. Fox] in the reply the last year, that it is well worth your Lordships most serious attention. You will recollect that for those sums which are not in charge Mr. Hastings took Bonds. In the account inclosed in his letter of the 22d of May 1782, he says that these Bonds remained in his possession, with an indorsement on each; that he had no right to either the principal or interest; and that he had not received any of the latter. It did not appear by this statement at what periods the Bonds were indorsed. Mr. Hastings told the Directors that they were indorsed prior to his leaving Calcutta in the month of July 1781, but desirous in this instance, as in all others, to give every information required, or to verify his own assertions, an application was made to Lord Cornwallis by the authority and at the desire of Mr. Hastings, for those Bonds to be sent to England; and they arrived at the India House in the year 1789. Your Lordships will remember the remarks made upon this subject in the following year by the Managers; for the fact turned out to be, that the Bonds were not really indorsed until the 29th of May 1782, that is, seven days after the letter of the 22d of May was written. The Managers spent no inconsiderable time in endeavouring to convince your Lordships that this blunder proved the guilt of Mr. Hastings; possibly your Lordships, as judges, may draw a different conclusion. It is certainly a question of inference; and after weighing the matter fully, I confess that I do draw

draw a conclusion the very reverse from that of the Managers. Why did Mr. Hastings tell the Directors that he had indorsed the Bonds prior to the 7th of July 1781, unless he really conceived he had done so? The Directors asked him no question as to the date of the indorsement, and no possible advantage could result to him from the assertion of so foolish a falsehood. You must go further, my Lords, if you believe with the Managers, that Mr. Hastings told a falsehood in order to mislead the Directors. You must ask, What motive could induce Mr. Hastings to send to Bengal for evidence to expose his own falsehood? You must conclude that he wrote what was not true, for the mere pleasure of detecting himself in a falsehood. When Mr. Hastings addressed your Lordships, at the close of the year 1791, he expressed his surprize and concern at the many mistakes which he had committed; and he naturally enough, I think, imputed these mistakes to his having written on matters of account without an account before him; for he adds, that if there had been one circumstance more strongly imprinted on his memory than another, it was this, that prior to his leaving Calcutta in July 1781, he had indorsed those Bonds; that it was he himself who sent to Bengal for the Bonds to verify the fact which he had asserted, but having discovered his error, he was almost afraid to hazard a conjecture. He presumed however that he must have confounded two distinct things; that in point of fact he had left the Bonds with Mr. Larkins to deliver up to the Company in the event of his death, Mr. Larkins having known *from the first*, that the Bonds were not his property.

My Lords, the unprecedented length of this trial enabled the Court to have the benefit of the evidence both of the Marquis Cornwallis and Mr. Larkins. The nature of the evidence of the latter Gentleman, given in reply, in the last year, induced one Manager [Mr. BURKE] to affirm, that the guilt of Mr. Hastings was now so apparent that he must wish for mountains to cover him. Another Manager [Mr. Fox], who summed up the evidence in reply, contended that the guilt of Mr. Hastings was fully established by the evidence of Mr. Larkins; and I am very ready to agree, that if Mr. Larkins's evidence had really been what the Manager said it was, this conclusion was inevitable.

PART VIII.

The Commons would have fixed an indelible stain upon the character of Mr. Hastings; though your Lordships could not have convicted him, on a point which is not in charge. The Manager said, "that Mr. Hastings, not supposing it possible that Mr. Larkins should arrive in England in time to give evidence on this cause, had taken the advantage of his absence to affirm most positively, that from the first Mr. Larkins knew the Bonds not to be his property; and as Mr. Larkins was a man of acknowledged integrity, high in the confidence of Lord Cornwallis, and in great esteem with the Directors and the Board of Control, Mr. Hastings had conceived that your Lordships would infer his innocence from the circumstance of having communicated these private receipts of money to a man of so high and fair a character. Mr. Larkins however had sworn to your Lordships, that he did not know the Bonds to be the property of the Company until the 22d May 1782, consequently Mr. Hastings had asserted what was not true; and it was impossible for the most credulous man alive, or the man most warmly attached to him, to believe that he had made such an assertion with any other view than to cover his own guilt."

I have read over the evidence of Mr. Larkins with the utmost attention. Possibly it was not printed when Mr. Fox spoke; or he might have confided in a syllabus drawn up by the Agents; or he might have trusted to the impression which, from a partial attention to Mr. Larkins when he delivered his evidence, remained upon his memory. I will endeavour to state to you the result of Mr. Larkins's evidence on the point in question, which, after a long examination in chief by the Managers, a cross-examination by the Defendant's Counsel, and a re-examination by the Managers to this particular point, is, that Mr. Larkins cannot recollect being told by Mr. Hastings prior to the month of July 1781, that the Bonds in question, not being his property, were to be delivered up in the event of his death; that he by no means will swear that he was not so told, though he thinks it is a circumstance that could not have escaped his memory; that these Bonds were always in his custody; that the private books of Mr. Hastings were also in his custody; that these Bonds

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never were entered in those private books; which they would have been, had he not known that they stood in some peculiar light: That the first year's interest became payable upon these Bonds while Mr. Hastings was absent from Calcutta; and unless he, Mr. Larkins, had received some intimation from Mr. Hastings to the contrary, he certainly should have received the interest due upon these Bonds. He did not receive it. To various questions on this point Mr. Larkins gives a similar answer—expresses his concern that he cannot at so great a distance of time recollect what intimation Mr. Hastings gave to him, but is confident he had received some directions from him. Now the fair conclusion which a judge will draw from this evidence must be, that Mr. Hastings had done what he says himself he did do. He had told Mr. Larkins, as soon as the Bonds were granted, that they were granted for money belonging to the Company. There can be no other cause assigned for the conduct of Mr. Larkins. A man of business, personally attached to Mr. Hastings, would not have neglected to receive the interest due upon these Bonds: A man of business would not have neglected to enter them in his books, as part of his private fortune. Mr. Larkins is both a man of business and personally attached to Mr. Hastings. The fourth Bond that Mr. Hastings took from the Company at the same time for one lack of rupees, was for his own money, as Mr. Larkins has proved: That Bond was entered in his private books, and has been completely liquidated in England.

I have to apologize to your Lordships for the length of time that I have intruded upon your indulgence; but as I conceive we are now upon the most material part of the whole case, I have endeavoured to state the evidence upon it as clearly as possible, after having repeatedly read it with the closest attention. With respect to those sums for which Bonds were granted, your Lordships will see, by comparing them with the account inclosed in Mr. Larkins's letter of the 5th of August 1786, that one lack and a half was received as a peshcush from Nuddea, and two lacks as a peshcush from Dinagore. The Commons were possessed of this information two months before they presented the Impeachment at your Lordships bar; but they did not think proper to

charge Mr. Hastings with criminality, either for receiving these Presents, or for taking Bonds for them, or for giving no account of the balance which remained on the Dinagore caboolat. But there is no part of the case in which both the Managers and the Defendant's Counsel have argued so much at length: I have therefore examined the evidence, and considered the arguments with all the attention in my power. With respect to the Charge now under consideration, the receipt of the Present from Cheyt Sing, my opinion decidedly is, that Mr. Hastings ought to be acquitted of the suspicion of an intention to appropriate that money to his own use. If, from the evidence before the Court, or from inferences fairly resulting from that evidence, I could be induced to believe in my conscience that he intended, though but for a moment, to apply any part of it to his own use, I should certainly vote in the affirmative for the motion which I shall now have the honour to submit to your Lordships, and to which I shall certainly say *Not-Content*.

Lord Thurlow then moved, "That the Commons had made good the Sixth Article, in so far as related to the sum of two lacks of rupees corruptly received from Sadanund the huxcy of Raja Cheyt Sing."

The Lord Chancellor began a long speech with laying it down as indisputable, that, independent of the Act of Parliament of 1773, a President of a Council, or a Governor-General in India, taking a Present from a person connected with, or dependent on him, was a crime by the common law of England. In like manner in the case of bribery, to give or accept a bribe was a crime at common law, independent of the various Statutes in existence on the subject of bribery. His Lordship referred to the Statute 5 & 6 Edward VI. Cap. 16. against buying and selling of offices, and drew an inference from it in support of his arguments. His Lordship said, that however they might have differed on other parts of the Charge, there could not be a shadow of doubt that the Commons had made good all the remainder of this Article. Mr. Hastings had accepted various sums from different persons, as appeared from the evidence and his own admission, which having been all given to procure general favour, the receipts of those sums by him was highly criminal, nor

did the law require in this case a more minute particularity in drawing up the Article than was to be found in the Impeachment; and the reason was obvious—the transaction in each instance was *prima facie* a crime, because the motive and principle which actuated the mind of the giver, and influenced him to make the offer, was clear, evident, and undeniable; nor could it be for a moment mistaken by the receiver, because common sense would tell him when the offer was made, for what purpose it was made; and he must know that by receiving it, he gave the person giving reason to expect, that by the Present he had purchased a right to consideration and favour, either in some particular instance then in agitation, or that might be in agitation on some future occasion.

Having thus emphatically stated what he maintained to be the point of law respecting the Presents received by Mr. Hastings, his Lordship proceeded separately to examine and discuss the circumstances of each, and to compare them respectively with the evidence in the view in which it appeared to him to apply. He began with the Present of two lacks of rupees from Cheyt Sing, received by Mr. Hastings from Sadanund, the Raja's buxey, and this he traced from the first tender of it on the part of Sadanund, with the Governor-General's subsequent consent to its payment to Croftes, through the hands of Larkins, in whose hands it lay as a deposit for the Company's use; but it was not rendered applicable to their service till some years afterwards. His Lordship dwelt for some time on the whole of this transaction; he stated the conduct of Mr. Hastings at the Board, when he proposed to march a detachment under Major Camac into the province of Malwa, in hopes to draw Mhadajee Scindia from Guzerat, and thus lay a foundation for peace.

He said, Mr. Hastings's proposition was rejected by the Council when it was made, and yet he suffered the money to remain in the shape of a Deposit, as he called it, in the hands of Mr. Croftes, the Company's sub-treasurer in Calcutta, for years together. He referred to the letter of Mr. Hastings to the Directors of the 29th November 1780, in which he declares, "that the money tendered by him to the Board to defray the expence of Major Camac's detachment, was not his own

property, but had been received by him for the use of the Company: He farther explains his motives for buying off the troops of Berar under Chimrajee Boosla, and states that he caused three lacks to be delivered to the Raja of Berar, two thirds raised by his own credit, the other supplied from cash in his hands belonging to the Company." His Lordship asserted, that nothing could be more evasive or unsatisfactory than this letter, in which the Governor-General neither informed the Directors when he received the money, where he received it, nor from whom he received it. Nor did he state any one circumstance explanatory of the transaction with Sadanund, the first tender of the Present, his rejection of it, his subsequently consenting to take it, the mode of its being paid in by the buxey of Cheyt Sing to Larkins, and from him to Croftes, nor any other particular that could give the Directors a clear idea of a matter which upon the face of it was involved in doubt.

His Lordship detailed the history of the Bonds made out in consequence of the letter of the Governor-General to the Council of January 5, 1781, agreeable to the minute of January 9; and argued from the letter of Mr. Larkins to the Chairman of the East India Company, August 5, 1786, in which an account is given of the Bond No. 89, that Mr. Hastings had by no means established that part of his Defence relative to this transaction which he had delivered in to the House of Commons. He referred also to the Directors' letter of January 25, 1782, in which they disapprove of the nature of the transaction, and contended that, in consequence of that disapprobation, Mr. Hastings ought immediately to have communicated all the circumstances respecting the Present received from Sadanund, on the part of the Raja Cheyt Sing. His Lordship laid great stress on the length of the period which Mr. Hastings suffered to escape, before he actually turned the deposit of the two lacks in question over to the use of the Company, declaring that circumstance alone to be conduct not only questionable, but highly blameable, and deserving censure of the severest sort, considering how soon it was after the money was paid in to Mr. Larkins by the Raja's buxey. Mr. Hastings knew that the Council would not accept of it for the purpose which he had proposed to apply it, viz. to the

service of Camac's detachment, with a view to lay the foundation of a peace with the Marattas. Upon the whole, his Lordship said, regarding the charge respecting this Present from Sadanund in every possible view that the evidence tended to give, he thought that Mr. Hastings could not stand excused on any pretext of reason or justice, but that he had been convicted in the clearest manner of the crime alleged by the Commons.

His Lordship next proceeded to discuss the Charge respecting the Present of ten lacks of rupees from the Nabob, stated by Mr. Hastings to the Directors in his letter of the 20th of January 1782, which donation, he informs them, was made in part only, and *tardily paid*. In order to prove that this description of the circumstances of the Present was not true, his Lordship referred to the letter of Mr. Hastings to the Directors of the 22d May 1782, to the account referred to in that letter, to the affidavit of Larkins, to the letter of Mr. Hastings to the Directors of December 16, 1782, to the Defence and Narrative of Mr. Hastings, and to the evidence relative to the three Bonds delivered on January 17, 1785, to Larkins's affidavit respecting them, and to the evidence of Mr. Wright, who, on his examination in Westminster-Hall, on the 18th of February 1790, produced one account shewing that upwards of eight lacks of the Chunar Present were received before the end of January, and another account shewing the appropriation of the sums received, comprised in the above-mentioned account. His Lordship pointed out several contradictions between the account that Mr. Hastings gave of these Bonds, and all the relative particulars. He observed, that in Westminster-Hall the Counsel for the Defendant had particularly laboured their defence of the Bonds, as well those to which this part of the Article referred, as those in the subsequent Charges comprehended in it; but although they had undoubtedly displayed a considerable share of ingenuity, they had produced nothing like conviction on his mind. After enlarging upon each particular, and reasoning much at length upon the circumstances of the case at large, he contended, that taking the account as favourably for Mr. Hastings as it could be collected from his Defence and Narrative, and from the statements of Mr. Larkins, there remained a considerable sum, not less than

one lack and a half of rupees, out of the amount of the Present from the Nabob of ten lacks, as yet wholly unaccounted for.

After some reasoning upon the Dinagore peculium, and stating why he thought that constituted a part of the money received from Nundool, and paid in by Mr. Hastings, when he furnished the money sent to Chimnagce Boosla (which opinion his Lordship rested on the various accounts stated in the several accounts contained in the letter sent by Mr. Larkins to the Directors, dated August 3, 1786), the Lord Chancellor came to that part of the Article which contained the Charge against the Defendant relative to his transactions with Kelleram, a renter under the Company. In tracing the particulars of this Charge, his Lordship referred to various letters of Mr. Hastings to the Council at Patna, and Minutes of the Council of Calcutta, as also to the evidence of Mr. Hudson, to shew that no security besides a common caboulat was taken from Kelleram, as renter of the province of Bahar; and to the evidence of Mr. Young and Mr. Anderson, touching the character of Kelleram and Gunga Govind Sing, and the particulars of the four lacks which rumour said had been given to Mr. Hastings by Cullian Sing, and of which he gave notice to Mr. Hastings. Though rumour was in general a common liar, his Lordship said, that rumour in this instance spoke the truth, for four lacks were received from Kelleram, through the hands of Gunga Govind Sing. He proceeded to reason very minutely on the appropriation of these four lacks, and declared his conception of it to be extremely different from that of the Noble and Learned Lord who had just sat down.

His Lordship stated in what particulars the difference between his idea of the appropriation of the money in this and the former instance of the supposed Dinagore peculium, and the idea of the Noble and Learned Lord, consisted; contending that not more than five lacks and a half, or six at the utmost, out of nine lacks and a half received, appeared to be accounted for by the Governor-General. He adverted in the course of his argument (which in a great measure consisted of statements governed by arithmetical comparisons and data) to a variety of the lesser relative particulars, such as the abolition of the Provincial Councils, appointment

pointment of Gunga Govind Sing Dewan to the Committee of Revenue, when the Naib Dewan was Prawn Kishen his son, and the Naib Conongoe was Gunga Govind Sing, to the importance and nature of those offices respectively, &c. &c.

His Lordship said, Mr. Hastings did not give up the Bonds, or the deposit note, until January 1785; so that the affairs of the Company appeared for several years worse than they really were, and at a time when it was of consequence to give them full credit for all their assets of every kind.

Having dilated much at length on every part of the Charge relative to the transactions of Mr. Hastings with Kellaram, his Lordship finally called their Lordships attention to the Charge on the subject of the conduct of Mr. Hastings with Nobkissen, which he stated circumstantially, and animadverted upon with great severity, declaring that it did not appear to him a shadow of excuse could be pleaded in palliation even, much less in defence, of conduct so open to the imputation of corruption, as that of the Defendant in this instance. Mr. Hastings's own account of the transaction was this: "In the year 1783, when "I was actually in want of a sum of "money for my private expences, owing "to the Company not having at that "time sufficient cash in their treasury to "pay my salary, I borrowed three lacks "of rupees of Raja Nobkissen, an inhabitant of Calcutta, whom I desired "to call upon me with a bond properly "filled up; he did so, but at the time "I was going to execute it, he entreated I would rather accept the money "than execute the bond. I neither accepted the offer nor refused it, and "my determination remained suspended "between the alternative of keeping the "money as a loan to be repaid, and of "taking it, and applying it, as I had "done other sums, to the Company's "use." His Lordship said, it was scarcely in the human imagination to conceive in possibility a transaction more scandalous, or more unjustifiable in a Governor-General to such an individual as Nobkissen. He says in his Defence, he wanted money, and he lent to a notorious money-lender to borrow three lacks of rupees. The man comes, brings him the three lacks, and when he is about to fill up the bonds, he desires him rather to accept the money than execute the bonds.

He then says, he neither accepted nor refused the offer, but determined to suspend his decision upon the alternative; and to prove that this was his determination, what does he do? He does the essential act, he takes the money; keeps it, and lets the man depart without the bonds, or any legal security whatever. The idea of borrowing this money came into the head of Mr. Hastings while he was at perfect leisure sailing up the Ganges, and he carries it into execution in the manner that he had stated. Was it possible for a single moment to hesitate in pronouncing this a disgraceful and a fraudulent transaction? Supposing a case of a similar nature.—Let their Lordships suppose that he, being, as Mr. Hastings in his Defence stated himself to be, in actual want of a sum of money for his private expences, were to send to a Solicitor in Chancery, and desire him to bring him a thousand pounds, and upon his bringing him the money, he were about to execute a bond for that amount, and the Solicitor were to offer him the money as a gift, and he were to take it, without having given the Solicitor in question a legal security for it, of any kind whatsoever, and proceed to apply it to his own private purposes; would any man living believe, that he was not from that moment under the influence of the Solicitor; that he could not be conscious that he was so; that whenever he came before him as a suitor in a cause, his countenance and the recollection of the transaction would not operate as a check upon his conduct, and tend inevitably to warp and bias his decree, and thus subvert and destroy every principle of impartial decision, equity, and justice? Let their Lordships recollect, that they had upon their own Journals precedents of Impeachments founded solely upon the charge of money corruptly taken by persons in high offices, of a nature similar to that alledged in the Charge then under consideration, and precisely analogous to the case that he had put hypothetically respecting himself. Nay, it was upon record, that prosecutions had been instituted, and convictions obtained, followed by exemplary punishments, in cases where the parties had gone no farther than to presume to make the tender of a present, or, as it might more justly and in plainer language be termed, a bribe to a person in high office, the nature and powers of which necessarily implied, that he would be abundantly able to make an ample, but indirect return in future.

After

After pursuing this mode of reasoning; for a considerable time, his Lordship reprobated in severe terms the manner in which the Defendant had attempted to get rid of this money of Nobkissen's as a private Present to himself, and to place it to the Company's account, by making out a list of antiquated claims, being not only disbursements of long standing, but of state equipage and pageantry, aids-de-camp, and expences never before thought of as matter of charge by a person in any situation like to that held by Mr. Hastings, but charged by him in the Durbar accounts of the year, by way of *set-off* against the sum privately received from Nobkissen. Another circumstance struck him as very extraordinary: That the Governor-General of Bengal should want money because he had not received his salary, when it was well known that from his situation he might have paid himself with the utmost punctuality, was most unaccountable: There was nothing like proof of the assertion being true.—Mr. Hastings had offered no evidence to their Lordships on this point. It could not be contended that this part of the Defence was written by some other person; it was very short, and he must take it as Mr. Hastings had given it; and he must argue upon it as written by Mr. Hastings himself, which it certainly was.

After reasoning at some length and very closely upon this part of the case, his Lordship again touched on the essential facts in each Charge to which he had adverted, and said, that with respect to the present of ten lacks of rupees received from the Nabob Vizier, and which Mr. Hastings had appropriated, as he said, to the public service; the fact did not by any means appear to him to be clearly ascertained. Upon the very face of the account, above a lack and a half of rupees was stated to be a balance in Mr. Hastings's hands. It did not appear that he had paid that balance. There was also in the account four lacks and a half of rupees sent to the President of Benares, which, for any thing that appeared, might have been repaid to Mr. Hastings, as well as the five lacks sent to the army, and placed under the head of Military Charges. As to the present from Clcyt Sing, the Learned Lord said it did not appear to him now, whether the Company had ever got it. The Noble and Learned Lord said, and indeed Mr. Larkins had so sworn, that the sum brought to credit in November 1783, under the head of *Nabob's of different sorts* coined in the

Mint, was this Present. Now, their Lordships knew, that Mr. Hastings, as Governor, had been for years in the habit of receiving small Presents, called Nuzzirs, and bringing them to the credit of the Company. It appeared to him that this payment of "*mhors of sorts*," which was made in November, was really the produce of these Presents, or Nuzzirs, as these were called.

His Lordship declared, in treating the whole subject he had been speaking as solemnly and as seriously as he would have done, in trying a cause in one of the courts in Westminster Hall, and delivering a charge to a jury; he had no feeling of a personal nature, no motive of ill-will to the Defendant, nor any wish but to serve the cause of national justice, and to pronounce judgment according to the evidence, and his conviction of the result of the trial. Having said this, his Lordship gave it as his opinion, that the several matters of a criminal nature to which he had referred, might as well be comprehended in a general question, "That the Commons had made good the whole of the residue of the Sixth Article;" and the reason why he thought so was, that the facts criminally alleged throughout the Article, and proved in evidence, constituted only one general crime, viz. that of corruption; the several matters alleged and substantiated by the written and parole evidence were nothing more than so many overt acts or instances in proof of the general Charge. On that consideration he had taken the trouble to go through the whole residue of the Article, and should not, unless it should be made necessary by others, trouble their Lordships again respecting it. His Lordship concluded by saying, that he would not move the general question, which he had taken the liberty to suggest, if the Noble and Learned Lord wished rather to divide the Article into parts, and to make each part of the subject a specific question.

The Earl of Mansfield declared he had the misfortune to differ in opinion upon the occasion from both the Noble and Learned Lords. He would not attempt to adopt a doctrine so odious as that of endeavouring to justify a crime, by collecting a good intention from the use made of the produce of the crime ultimately: a doctrine more repugnant to every principle of justice he could not well conceive. Painful as it was to him to declare his opinion, since, in a certain degree, it was unfavourable to Mr. Hastings,

tings, yet his sense of public duty compelled him to do it. According to his construction of the law, Mr. Hastings had broke it in the five several instances now before their Lordships; he meant in the receipt of the several Presents from Sadanund, Kellaram, the Nabob Vizier, Nundoolol, and Nobkissen. He said he was aware that there were situations in which a public man might be placed, that would render a breach of the law not only venial, but highly meritorious. He made every possible allowance for the arduous and uncommonly difficult situation in which Mr. Hastings was placed, and consequently thought him justified in receiving all the Presents except the last, and that his conduct was even meritorious; since, after the fullest consideration he could give to the evidence, he did not, in his conscience, believe that Mr. Hastings had the most distant idea of appropriating one rupee of the first four Presents to his own use. He received them with the express determination of appropriating them to the public service, and they certainly were so appropriated. The contradictions in the accounts, numerous as they were, seemed to proceed from excessive carelessness and inattention, not from guilt. Indeed the Noble Lord (Thurlow) had stated the evidence so clearly, that his ideas were confirmed still more by that statement. But as to the last Present from Nobkissen, it stood on very different grounds. There was no State necessity pleaded for this breach of the law. The money, though taken for the Company, was taken to accommodate Mr. Hastings, and appropriated to discharge a demand stated to be due from the Company to Mr. Hastings. For his argument, the propriety of the demand was out of the question. Conceiving, as he did, that the receipt of each Present was illegal (though State necessity justified all the receipts but the last), he must vote, that in this instance of Nobkissen's Present, Mr. Hastings had acted illegally; and, as here he could not acquit, he must reluctantly condemn the act, unless it should be proved to him that his opinion of the law was erroneous. He lamented, that there should be a single point in which he could not acquit Mr. Hastings, consistently with his duty as a judge, for no man had a higher opinion of the great and important public services he had rendered his country than he had; and when he considered the many hardships he had suffered since his return from India, as well

from the circumstances as the extreme length of the severe and arduous trial Mr. Hastings had undergone, the calm dignity and composure with which he sustained what no man had ever borne before him, he felt himself strongly inclined to put the most favourable construction on all his actions.

Lord Thurlow, in reply to the Lord Chancellor, said, he staked all the credit which their Lordships might be disposed to give him for knowledge as a lawyer or integrity as a man, on the question stated by the Noble Lord. He differed with him completely, and he believed the Learned Lord would not get a single lawyer in the Kingdom to support the doctrine he had so distinctly laid down, and which, if he understood him right, was this:— That the receipt of a Present, by a person in the situation of Mr. Hastings, must be corrupt; and that it was not necessary to charge it to be a bribe in the Impeachment, because the person giving the Present could only give it with a hope of procuring general favour. This proposition, Lord Thurlow contended, could not stand for a moment in Westminster Hall. The Commons, to shew corruption, ought to have charged some act done by Mr. Hastings to the several persons from whom the sums were received, as in the first division of this Charge. In that, they accused Mr. Hastings of giving away offices for money, in the way of brokerage. There the Charge was properly drawn up: but in the present case the Charge was not so worded; he was merely charged with receiving certain sums as Presents or gifts, except in the case of Kellaram, where, in consideration of this Present, he let him certain lands. That case he should consider fully, when it came unmixed with the present question, which he hoped the Learned Lord would allow to be put unconnected with other matter that had no relation to it. When he came to the Charge of Nobkissen, he would endeavour to state the opinion he had formed upon it. He was indeed astonished at the remarks which the Learned Lord had made upon the Durbar Charges. He would state how the evidence struck him, when he took into consideration the Present from the Nabob Vizier.

Mr. was his astonishment less excited by the remarks which the Learned Lord had made on the Benares Present, remarks which had escaped the sagacity of the Managers themselves. It was distinctly in evidence, and sworn by Mr. Larkins, that

that the entry under the head of Deposits, in the treasury account for November 1780, was the Present received from Cheyt Sing in June : but, being received in gold mohors, not current in Calcutta, it was not brought to credit until the whole was coined ; though as fast as it was received from the Mint it was paid into the treasury, and expended in the public service ; for the Learned Lord has not at all attended to the evidence of Mr. Larkins, if he supposes that these two lacks were not employed in the public service, because they were entered under the head of Deposits. Mr. Larkins swears distinctly, that this and every present was thrown into the general mass of money in the treasury, and employed for the public service. I fancy (continued Lord Thurlow) it will be found, that, during the war, the treasury in Calcutta seldom contained two lacks of rupees in it for two days together. The Learned Lord is totally mistaken in supposing it possible for Mr. Hastings to have entered Nuzzirs as Deposits. They are publicly entered under the head of Durbar Charges, words of similar import with Nuzzirs, when applied to receipts from the Governor-General ; whereas, had he entered those Nuzzirs as Deposits, he would have made them his own property. The Learned Lord cannot withhold his belief from the evidence given on these points, if he will condescend to read it. I do not wonder, considering the important avocations in which the Learned Lord is engaged, that he has paid more attention to the syllabus in his hand than it appears to deserve. All Nuzzirs are entered as Durbar Charges : In point of fact, there is no head of account in the Bengal treasury books called either Nuzzirs or Presents. The only head is Durbar Charges, and under that head all Nuzzirs, or Presents, received by Mr. Hastings on the Company's account are entered, as I will endeavour to explain when I consider the remainder of this Article. There is nothing like a reason to be assigned for discrediting the testimony of Mr. Larkins : He professes himself to be, and he undoubtedly is, a warm and sincere friend to Mr. Hastings ; but that friendship has not led him to swear positively to any point that he cannot fully recollect. Yet this gentleman swears directly, that the Present which Mr. Hastings received from Sadanund, for the Company, in June 1780, through him, was not entered in the treasury books till November ; because, until that month, the Pre-

sent paid in foreign coin was not all received and brought into the treasury. In addition to the evidence of Mr. Larkins, who appears to have stood equally high in the opinion of the Marquis Cornwallis and the Directors as in that of Mr. Hastings, there is the testimony of Mr. Markham, to whom Mr. Hastings communicated this Present : it stands, therefore, on the clearest and the fairest ground Two gentlemen of undoubted honour, and unimpeached characters, swearing positively to a fact, and no evidence being offered on the other side to disprove it, no doubt can remain in the breast of a Judge upon the subject.

The question now before your Lordships stands upon very distinct ground from all the others. It is in proof, that in June 1780 Mr. Hastings received a Present of two lacks of rupees : it is in proof that even before he did receive it he told Mr. Larkins, the gentleman to whom the money was to be paid, that he took it for the Company. A similar communication was made to Mr. Markham, in Bengal, immediately ; by the first foreign ship that sailed, to Mr. Sullivan ; and to the Directors by the first English ship. What evidence is there on the other side that can induce your Lordships to think that he took this Present for himself ? According to my judgment, none at all. I have already stated to your Lordships, that after telling his Council he had advanced his own money, it was absolutely necessary that it should appear on the treasury books as a deposit in his own name. But did that money deprive the Company of the complete use of it, from the instant it was paid in ? Certainly not. In May 1782 the Company were informed, that two lacks of rupees entered in such a page of the Deposit Journal, was their property. In the same letter they were informed, that certain Bonds, numbered so and so, were not his property, but the property of the Company. It cannot, therefore, be said, that Mr. Hastings, subsequent to the date of that letter, could have converted either the Bonds or the Deposit money to his own use ; therefore his not formally delivering up the Bonds until he quitted India in February 1785, was a matter of no consequence : it was equally immaterial as to the Deposits. The Noble and Learned Lord has been pleased to remark, that by not delivering up these Bonds, and striking his name from the Deposit Books, the state of the Company's affairs appeared to be worse than they really were in the

year 1783 by six lacks of rupees, or thirty thousand pounds. That is not the case exactly, if the fact really was of any consequence. In July 1783 the Company and Parliament were in possession of full information of those Presents. The measure which rendered a full exposure of the Company's affairs necessary was not brought in until November; and when the *deficit* was stated to amount to many millions, this small sum could not have altered the case in any degree.

The Lord Chancellor spoke shortly in reply to Lord Thurlow, in support and explanation of the point of law that he had laid down; upon which

Lord Thurlow rose again, for the purpose of declaring, that he totally differed with the Learned Lord, as to his construction of the law; but at that late hour of the night he would not enter into a farther discussion of the differences between them. He would reserve what he had to say upon it for their next meeting.

The Earl of Caernarvon declared he thought the arguments of the Learned Lord (Lord LOUGHBOROUGH), who had with so much ability and accuracy gone thro' the whole of the remainder of the Charge, were irresistible: to his mind at least they conveyed the strongest conviction; nor had any thing said by the Learned Lord who opened the discussion of the day (Lord THURLOW) tended to weaken that conviction. No man could be more conscious than he was of his own inability to contend on points of law with either of the Learned Lords; certainly he would not presume to do any such thing; but he could not help expressing a great doubt, whether the law could stand as it had been laid down by the Noble Lord who had opened the Charge (Lord THURLOW). It appeared to him so singular a proposition, that where a person, situated as Mr. Hastings, in his capacity of Governor-General, had been, accepted a Present from another, who was dependent upon his power, was not *prima facie* and of itself a criminal act, exclusive of its being prohibited by the Act of 1773, that, in his judgment, it could not be law. The Earl particularly adverted to the circumstances which marked the conduct of Mr. Hastings in respect to the Present of two lacks taken from Sadanund, the Buxey of Cheyt Sing, and said that all of them were unaccountably mysterious

PART VIII.

and obscure, if it were true that Mr. Hastings, from the first moment of his taking the money, meant to appropriate it to the use of the Company, as the Noble and Learned Lord had contended. If such had been his intention, why did Mr. Hastings cause the money to remain so long in the shape of a Deposit, altogether useless to the Company, in the hands of Mr. Croftes? The measure he took on that occasion appeared evidently to have no other motive than to shuffle off suspicion; or else why so much secrecy? The letter of the Defendant to the Directors, dated November 1780, on which so much stress had been laid, by no means cleared him from that suspicion. In that letter he contented himself with declaring, that the money tendered by him to the Board, to defray the expence of Major Camac's regiment, was not his own, but money which had been received by him for the use of the Public. The letter neither informed the Directors by whom the Present of two lacks was given, or when, or where. It was therefore liable to the suspicion of the letter's being so unsatisfactorily expressed merely to be used as a shield from detection, and to afford Mr. Hastings something to take shelter and to hide behind, whenever that Present of Sadanund's, or any other, so privately taken, should happen to be discovered.

After reasoning pointedly on the letter, as the strongest evidence of the Defendant's criminality, the Earl commented on the letter of May 22, 1782, and that of December 16 in the same year; arguing, that there was something extremely questionable in the circumstances relative to both. Mr. Larkins, in his affidavit, swears that the letter of May 22 was sealed up at the time of writing it, to be dispatched by the Lively, and that it remained closed until the date of the affidavit, viz. December 16, when it was opened. It was very unusual for a person who wrote a letter to refer to the enclosures contained, and yet seal his letter without first putting the enclosures referred to into it. The Earl also animadverted upon the accounts of the appropriation of the various sums received at different times by Mr. Hastings, and the accounts of Mr. Larkins of the same matters: and after arguing upon all the principal topics alluded to by the Lord Chancellor, his

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Lordship concluded with declaring, that in his opinion, had Mr. Hastings wished to conceal all the Presents he had taken, he could not have used more art, or exercised more skilful cunning to provide against detection, than he had used in every instance of receiving a Present. He therefore believed him guilty of the Charge, and should give his vote accordingly.

The Bishop of Rochester said, he could not satisfy his conscience to give a silent vote, or he would not rise at that late hour, but he would detain their Lordships a few minutes only. He felt himself bound to decide in his own mind by the evidence before him, and he had attended to the evidence as well during the trial as since it had been printed, with the utmost care and minuteness. In the volumes of evidence so often and so necessarily referred to, he saw nothing which could lead him to believe that Mr. Hastings had been actuated by bad or corrupt motives, and he would not allow himself to suppose that any such existed, without full proof to the contrary. He confined himself for the present to the two licks received from Sadanund, because that appeared to him to be the more proper subject of their Lordships consideration that day. The result of the whole evidence, as it struck him, was this : That Mr. Hastings was actuated by the purest motives in receiving that Present. That there were perplexities and contradictions in the accounts ; he was willing to admit they had employed him many hours in his closet, and he was ready to confess that he was not sufficiently master of merchants accounts to unravel them ; but he was equally ready to confess that he drew conclusions from these contradictions totally different from those drawn both by the Noble and Learned Lord on the woolsock, and the Noble Earl who had just sat down. In the account given of those Bonds by Mr. Hastings, and in the account given by Mr. Larkins, there were differences ; but he believed Mr. Hastings had been mistaken, and that Mr. Larkins's account was the correct one. No Noble Lord could believe, that if Mr. Hastings had written a wilful falsehood from Cheltenham, as to the date of the indorsement on the Bonds, he would have eagerly sent to Bengal for those very Bonds, which the moment they appeared must convict him of misrepresentation.

No man surely could believe, that if Mr. Hastings originally received the Bonds with an intent to convert them to his own use, he would not, on being induced by fear to alter his mind, have antedated the indorsement to the very day that he received the Bonds. He fully concurred in all the reasoning of the Noble and Learned Lord (THURLOW).

The Managers had read a letter from Mr. Hastings, which they pledged themselves to falsify in all its parts ; but they had wholly failed to do so. His Lordship went through the several prints of the letter, and said, not only the facts stated in it were undeniable, but no Noble Lord, in his opinion, could read it without seeing the mind of the writer, and without being convinced, that base and sordid enolument were not the objects which attracted his attention. In this case, where there was in fact no evidence, and where all depended upon inference, he must resort to general character ; and he had no scruple to say, that the Commons had totally mistaken the character of Mr. Hastings. They charged him with having adopted the various measures which form the Articles with the view principally of acquiring for himself exorbitant wealth. In his opinion, not a tittle of evidence had appeared to substantiate such an allegation ; on the contrary, that his character was completely the reverse appeared so strongly in proof upon the evidence, that it would be needless to strengthen that evidence by an appeal to the common sense and understanding of mankind on the subject. He could easily account for such a great character as Mr. Hastings, with so many important concerns upon his mind, having been uniformly negligent and inattentive to all matters of money, and all accounts that related to money transactions. Indeed it was evident that Mr. Hastings was a man who had been uncommonly regardless of money ; otherwise it would have been impossible to account for the state of his fortune in every year between 1778 and 1785, to which his Attorney had sworn at their Lordships bar : " and what " struck me," said the Learned Prelate, " as extraordinary, when not a " single question was put by the Managers." His Lordship concluded with declaring, that he should say *Not-content* to the motion.

THURSDAY, MARCH 24.

Lord Thurlow introduced the business of this day by saying, that it was his intention to have gone fully into the several points opened by the Noble and Learned Lord the preceding day; but that having mislaid his papers, he would endeavour to speak to them from memory, sensible that it would be too great an intrusion upon the time of the Committee to delay them a moment on that consideration.

The most material and important point of discussion was the ground upon which the Noble and Learned Lord had stated, that he thought *one* question only might be put upon all the remaining Presents, as in his opinion there was *one principle* which would govern them all, however they might vary in their circumstances. In the introduction of this principle, which, as far as his recollection went, was entirely *new* in point of discussion (it having never occurred to either party at the bar during the course of the trial, and certainly not to the prosecutors in framing the Impeachment), the Noble and Learned Lord had said *that* out of the case which in *his* contemplation of the subject was the only ground and foundation of the present Charge, as sent up by the Commons, namely, the Act of Parliament of 13. Geo. III. The principle so introduced however, and which he was now about to examine, was, if he understood it correctly, this, "That at
" COMMON LAW the *relative situation* of
" the donor and donee of any gift or
" Present, was *alone* sufficient to con-
" stitute the acceptance of such gift a
" *crime* for which an indictment would
" lie, always supposing the gift to pass
" from an inferior in office to his supe-
" rior; and *that, without charging* it to
" have been given for *brocade*, or
" *stating* any other *corrupt consideration*
" in the indictment." To this position their Lordships would recollect he had on the preceding day ventured to express not only his dissent, but some degree of surprise, inasmuch as it appeared to him to be extremely novel, and also to be at variance *both* with the *principles* and *forms* upon which all indictments for corruption, that had fallen under his observation, had hitherto been framed and supported. In advert- ing to this proposition at that time he had observed, and he still thought, that the relative situation of the parties in all pecuniary transactions of the

nature of those in question, was no doubt a material ingredient, and that which not only would but *ought* to excite a suspicion and jealousy, proportionate to the distance at which the giver was removed from the person receiving the present: but that it was *alone* sufficient to constitute and to raise the transaction, into a *crime*, was a proposition he never could accede to. Indeed the more he had considered it, which he did assure their Lordships he had done with all the attention he could give it, the more he was convinced as a lawyer, and in that conviction had had an opportunity of being fortified by much abler opinions than his own, that it would be impossible to support an indictment at *common law* against a superior in office for taking a Present from an inferior, by merely putting the *fact* of the *Present being made*, and the *relative situation of the parties*, upon the record; but that the indictment must go on to state some corrupt consideration as the motive, which corrupt consideration must either be admitted or proved as laid. The Noble and Learned Lord, in support of his proposition in a former debate, had alluded to the Stat. 5 & 6 Edw. VI. c. 16. against buying and selling offices, and had drawn an argument from it, as if before that statute the sale of offices was illegal at common law. But if any argument could be drawn from it, the whole frame of the statute, and more particularly the exceptions in it, afforded an inference the other way; it is an enacting not a declaratory statute. It excepts all offices of inheritance: it provides, "That the Chief Justices of the King's Bench and Common Pleas, and the Justices of the assize, may do in every behalf, touching any office to be given or granted by them, as they might have done before the Act;" and it allows "all bargains, sales, &c. of any office concluded before the 1st day of March next coming to be in such force as if the Act had never been made." Now, exclusive of the inconsistency which would be imputable to the Legislature in allowing the sale of offices for a limited period after the act was made, in derogation of the common law of the land, and a perpetual exception in favour of the Chief Justices of either Bench, and of the Judges of assize, it was a known and acknowledged fact, that every one of the very respectable

and honourable persons who have filled those several offices, have, from the time the Act was made to the present moment, without the smallest imputation or idea of stain upon their characters, sold the several offices belonging to their respective situations as they have become vacant, openly and without reserve. Could it then be argued that such sale was an indictable offence at common law; or rather, was not the uniform practice of so many respectable characters a proof of the reverse, and an affirmation of what the common law was in that respect? for the statute only allows them "to do in that behalf as they might have done before the Act was made." It was true, that in a case decided in the Star Chamber, and reported in Noy, the sheriff of Nottingham, who had given the offices of gaoler and bailiff to his servants, who sold them, and gave him the money, was indicted for so doing; and exception being taken that he could not be fined, but that it being an offence created by the statute he could only be punished as the Act prescribed, the Court held he might be fined, for that it was *malum in se*, and a crime at common law. But except that decision, which had never been followed or adopted by any authority since, there was no case to be found in the Books to warrant such a doctrine. That case, however, as far as it went, was an authority to shew, that if the matter in question were a newly-created offence, as in his opinion it clearly was, there could be no proceeding or judgment upon it but under the statute. He would next therefore proceed to examine the several remaining Presents in charge, and how far they were maintainable under the provisions of the statute, or supported in point of proof.

In the case of Kellaram and Cullian Sing, the Commons had expressly charged that Mr. Hastings took that money as a consideration for letting them certain lands in perpetuity, to the great injury of the East India Company.—In the case of Munny Begum and Nundomar, the Commons charge that he took bribes for brokerage and appointments to offices. In these instances the Charges are accurately drawn, and it is not true, that Articles of Impeachment have generally been loosely or inaccurately drawn. On the contrary, they have had all that legal

strictness of late years which is required in an Indictment. He did not speak, he said, of more ancient Impeachments, in which certainly very little attention was paid, either to the forms or the substance of justice.

Having concluded the legal argument, Lord Thurlow proceeded to the next head of the Charge, upon which he said he would not trespass long upon their Lordships indulgence, as the evidence upon it lay in a very narrow compass.

The Commons accused Mr. Hastings of having received a Present or bribe of four lacks of rupees from Kellaram and Cullian Sing, or one of them, about the month of October 1780, as a consideration for letting certain lands in Bahar in perpetuity, to the great injury of the East India Company.

There certainly, his Lordship said, was no evidence to fix the receipt of this Present, or of the caboolat or engagement for the Present, at the period mentioned in the Charge. On the contrary, the evidence carries it to a later period.

The evidence proves, that in the month of July 1780 Raja Kellaram was permitted by the Patna Council to go to Calcutta, at the desire of Mr. Hastings. On the 14th of November 1780, the Governor-General presents to the Board an arzee from Maha Raja Cullian Sing, with proposals for renting the Province of Bahar. He recommends to Mr. Francis and Mr. Wheeler, the two Members present, the acceptance of these proposals. Nothing further appears to have been done at that meeting of the Board.

On the 15th of December a letter is read from the Council of Patna, in which they state that they have concluded a settlement, subject to the approbation of the Supreme Council, which is more advantageous than any settlement made for many years past. The Secretary is immediately ordered to draw out a comparative view of the two settlements, viz. the proposals from the Patna Council, and from Maha Raja Cullian Sing.

On the 19th of December the Secretary presents it; and it appears from the comparison that Cullian Sing's proposals are more advantageous than those sent down by the Patna Council; the former are therefore accepted. Kellaram, the Naib or Deputy of Cullian Sing, being called, declares his master's assent.

assent to the conditions. Khelats are ordered for Cullian Sing and Kelleram, and the Patna Council are informed that the settlement is concluded with Cullian Sing.

The fundus was made *moderum*; a term which the Commons call a grant in perpetuity; but, my Lords (continued Lord Thuriow), I know precisely what a *moderum* tenure is, and how very different indeed it is from a grant in perpetuity. It was a grant to Cullian Sing, which must have expired at his death at all events; but it was only to continue in force so long as his kists were regularly paid, and so long as no oppressions were exercised on the inhabitants. He was not permitted to claim as a right any deductions from his stipulated payments, either for drought, inundations, or the ravages of enemies. If any deductions were allowed hereafter, they were to be received as indulgences. Leases in perpetuity are indeed *now* granted throughout Bengal, the rents are on no account to be increased, but to remain invariable so long as the present holders of the land and their heirs shall pay the rents as settled in the year 1791. How it could be injurious to the interests of the East India Company for Mr. Hastings to act upon a principle infinitely short of that which has since been adopted by the Company and the King's Ministers, I cannot easily conceive.

There is a strange inaccuracy runs through the whole of the Managers' observations on this Charge. They first offered evidence to shew the unfairness of Kelleram, as a renter of lands; yet the lease was in the name of Cullian Sing. They next produce evidence to shew that a lease was granted to Kelleram: the evidence proves that it was granted to Cullian Sing, a man of very considerable rank, and son to Maha Raja Sittabroy, who enjoyed the same unlimited power, as Nab Dewan of Bahar, which Mahomed Reza Cawn possessed in Bengal under the governments of Lord Clive, Mr. Verelst, and Mr. Cartier.

Your Lordships would not permit evidence to be given beyond the point to which I am now arrived. The Managers wanted to prove that Kelleram fell into great balances; but there was nothing charged against Mr. Hastings to which evidence to such a point could apply; and here the whole evidence as to the letting of the lands stops. It is in

substance, that Maha Raja Cullian Sing having offered to rent part of the province of Bahar, on terms more advantageous to the Company by nearly two lacks of rupees a-year than those offered to the Patna Board, the Governor-General and Council accepted the terms of the former. It is not to be believed that the Managers, or those whom they employed to draw the Articles, would have omitted to charge that in the end the Company lost considerably by this lease, provided the fact were so. Neither your Lordships nor the Managers are competent to enter into an examination of an intricate detail of Indian revenues, though we can all comprehend the result. I certainly have seen a paper presented to the House of Commons from the India House, by which it appears, that under Cullian Sing's lease of two years, he paid more money into the Patna treasury by very near sixty thousand pounds sterling, than was paid in under the settlements formed for the two years preceding by the Patna Council. With this evidence in the Managers' possession, it would have been a very useless attempt to carry the Article further.

I come next, my Lords, to consider the evidence which the Managers have offered relative to the caboolat, and the money actually received upon it. The first document to this point is the account inclosed in Mr. Hastings's letter of the 22d of May 1782. It appears that on the 26th of April 1781, the sum of two lacks thirty-two thousand rupees was paid into the treasury by the order of Mr. Hastings under the head of Durbar Charges: that is, Mr. Hastings admits the receipt of a Present to such an amount, on the Company's account. From the moment the money was so paid in, it became the Company's property, and Mr. Hastings could not interfere with it. The running treasury account, on which this receipt was entered, came to the India House in the month of July 1782, and did not attract the attention of the Directors. On the 16th of March 1784, as I have already stated to your Lordships, the Directors desired Mr. Hastings to inform them at what periods the several sums were received which made the aggregate of the account inclosed in his letter of the 22d of May 1782. Mr. Hastings, unable to give a complete answer to this question from Cheltenham, referred them to Mr. Larkins; but the Directors,

tors, satisfied, as it should seem, with the general information which Mr. Hastings had given them, enquired no farther: but Mr. Hastings himself wrote to Mr. Larkins to send to the Chairman the only memorandum which he had ever possessed that could throw a further light upon the subject. He did so; and if your Lordships will turn to the evidence you will find Mr. Larkins's letter, dated the 5th of August 1786, and an account accompanying it, certainly very loose and imperfect, but beyond all doubt that to which Mr. Hastings alluded, as the only memorandum he ever possessed; and it gave a clue to the Directors to make any further investigation they thought proper. Your Lordships will always bear in mind, that this account was transmitted for no other purpose than to give a fuller answer to a question put by the Directors to Mr. Hastings on the 16th of March 1784, than he was able to give them merely from memory at Cheltenham. The Managers, by reading it, have made it evidence. From this account then it appears, that between the 21st of March and the 26th of April 1781, the sum of two lacs and twenty thousand sicca rupees was received from Patna, and that on the 26th of April two lacs of sicca rupees were paid to Mr. Croftes, the sub-treasurer. If there was no other evidence, this account would be absolutely unintelligible; but connecting it with Mr. Larkins's evidence, and the note at the foot of the account, it appears very clear that a caboolat or obligation for four lacs of rupees had been entered into; that upon this caboolat two lacs were paid into the treasury by Gunga Govind Sing, and entered by the order of Mr. Hastings under the head of Dwar Charge, that is, as I have already stated to your Lordships, a Present received by the Governor General on the Company's account. There is not a shadow of evidence to warrant a suspicion that Mr. Hastings himself ever received one rupee upon this caboolat, or upon that of Dinagore, which, though not in charge, I have explained as fully as the evidence permitted me to explain it on a former day: I mention it again, because the Managers have observed, that the caboolats from Patna and Dinagore were for four lacs each; that is, in all, eighty thousand pounds, of which only the one half has been paid to the Company. The fact undoubtedly is so; but the Commons, though in possession of all the evidence they now have, two months before they drew this Article, have not made it matter of charge, that

these balances. If there had been any ground to suspect that these balances had really been paid into the hands of Mr. Hastings, or into the hands of any person in trust for him, I should imagine that the persons who drew out the Articles would have charged the fact expressly: as the case now stands, it rests upon his own solemn declaration, that he has accounted for every rupee that came into his hands; and it cannot be believed for one moment, that he would have defied Mr. Larkins to send to the Chairman the only memorandum existing, from which it could be known there was any balance, if he had put a single rupee of it into his own pocket.

The Noble and Learned Lord has laid a considerable stress on the rumour generally prevailing of a Present given to Mr. Hastings by Cullian Sing and Kellaram. He has referred your Lordships to the evidence of Mr. Young, Mr. Moore, and Mr. Anderson. Mr. Young deposed, that the rumour was very general, and that in December 1780 he heard a specific sum mentioned, four lacs of rupees. Mr. Moore says, he heard that the money was paid in October 1781, which must be a mistake. Mr. Anderson swears that he heard the same rumour in December 1780, and I am sure it must have been from mere accident that the Noble and Learned Lord (unless he has been misled by his syllabus) omitted to state the most material part of Mr. Anderson's evidence—the part which, in my mind, is decisive upon the question. Mr. Anderson swears that in May 1781, having again heard this rumour, and thinking it very inconsistent with the character of Mr. Hastings, he mentioned the report to him. Mr. Hastings immediately told him, not to make himself uneasy, or to give himself any concern about what he had heard; for whatever sums had been received, had been accounted for to the Company; that he thought it right to take money in that way at the time the Company was in such great distress, and it might not have been procured in any other way. The Managers did not chuse to pursue this examination further, and they have adduced no evidence from which your Lordships can conclude that the money might have been received publicly, as a peshcush or nuzzerana, on behalf of the Company. I protest myself to be utterly ignorant of the manners and customs of the people of India; but as this testimony from Mr. Anderson remains uncontradicted, and as Mr. Hastings himself has said in a letter pro-

produced by the Managers, "the four-
ces from which these reliefs to the pub-
lic service have come, would never
have yielded them publicly;" I am
bound to believe that this is the true state
of the fact, and that the renters and Ze-
mindars of Patna, Dinagepore, and Nud-
deah, from whom Mr. Hastings privately
received near sixty thousand pounds in
the years 1780 and 1781, would not have
paid those sums publicly to the Com-
pany, had Mr. Hastings declined to take
them in the mode that they were really
given.

I am afraid I have already troubled
your Lordships too long upon this
Charge; but I have been the more parti-
cular, because the Commons have charg-
ed this money to have been received as a
bribe, in consideration of granting a
lease on injurious terms. Your Lord-
ships see that the money was paid by in-
stalments, between the 21st of March and
the 26th of April 1781, and on the last-
mentioned day it was paid into the trea-
sury, as a Present received by Mr. Hast-
ings on the Company's account. As he
appears to have received the money solely
for the Company, as there is nothing like
evidence to prove that he at any time in-
tended to take this money for himself, and
as upon the face of the agreement with
Culian Sing it appears that he was bound
to the performance of every condition
which could be required from him, for
the advantage both of the Company and
the people, and as his proposals were
more advantageous than those transmitted
by the Patna Council, I am clearly of op-
inion that the Charge has not been made
good. On the Charge called Nundool's
Present, there will scarcely be a difference
of opinion.

Mr. Hastings is next accused of having
received a Present of ten lacks of rupees
from the Nabob of Oude in the month of
September 1782; and as matter of ag-
gravation, it was stated, that the Nabob
was in great pecuniary distress at the time,
and deeply in debt to the East India Com-
pany. The Charge in this part also is
very inaccurate; for the evidence adduced
by the Managers proves, that above one
third of this Present was made by the
Nabob's Ministers. It is by no means
proved that the Nabob was in a state of
great pecuniary distress; that his public
finances were in very great disorder, and
that they had been so from 1775 to 1781
is out of all question; but if your Lord-
ships will look to the correspondence of
the several Residents, you will see, that
next to the disorders occasioned by the

Begum withholding the public treasures
from the public service, the distresses of
the Nabob's government were owing to
the very large sum that he required for
his privy purse. It is in evidence that in
the economy of his household he would
neither permit his Ministers nor the Brit-
ish Resident to interfere. A Sovereign
may be very rich when the State is poor;
and I think it is much more probable that
the Nabob himself was in very affluent
circumstances, than in a state of great
pecuniary distress. But the question for
your Lordships to consider will be, Whe-
ther, under all the circumstances of the
case, it was criminal in Mr. Hastings to
receive a Present of ten lacks of rupees,
and to apply it as he did to the Compa-
ny's service? In this, as in every other
instance of the Presents, Mr. Hastings
affords the Managers all the information
that they have given to your Lordships. It
appears then, that between the 11th and
19th of September 1781, Mr. Hastings
received from the Nabob and his Minis-
ters a Present of ten lacks of rupees,
of the currency of Oude, in bills. It
appears also, that the first payment upon
these bills was made in October, and that
in the month of March 1782 the whole
sum was received. It appears also by
the letter from Mr. Hastings to the Di-
rectors, dated the 20th of January 1782,
from Patna, that such sums as to that
time had been received, were expended in
the public service, and Mr. Hastings
assures the Directors that the remaining
sums shall be so employed. The ultimate
appropriation of this Present he left en-
tirely to them; adding, that if they ad-
judge it to him, he shall receive it with
gratitude. The Directors had the power
to do it, in the same manner that they
gave the Present from Sujah Dowlah to
the Army. They might have given the
Nabob credit for it, as taken in part
payment of his debt to the Company; or
they had the power to do, what in effect
they did—they took it for the Company.

My Lords, for a Present received under
such circumstances, so applied as this was,
and so ultimately appropriated by the
East India Company, Mr. Hastings has
been criminally acute, and your Lord-
ships are now to determine his guilt or his
innocence. The evidence upon this
Charge lies in a very narrow compass in-
deed, though it has been branched out
very unnecessarily, I think, by the Ma-
nagers, who at the commencement of
their evidence undertook to prove that
Mr. Hastings had written a false statement
to the Directors on the 20th of January
1782,

1782, when he declared, that though he had accepted the Present in Sept. 1781, and had expended such sums in the public service as he had received, it had up to the date of his letter been in part only and *tardily realized*. What possible end it could answer to Mr. Hastings to make such an assertion, if it were not true, I cannot conceive; and all the time that was spent in attempting to prove the assertion false, appears to me to have been very uselessly wasted. If the Noble and Learned Lord had not alluded also to this circumstance, I should not have noticed it at all.

(The Lord Chancellor whispered across the table that there was another expression in the letter, "a Present of the *nominal* "value of ten lacks," which, coupled with the words *tardily realized*, had attracted his attention.) Lord Thurlow proceeded: I am much obliged to the Noble and Learned Lord for his explanation, but I am still as much at a loss as ever to divine his meaning. The nominal value? My Lords, the expression is highly proper. Mr. Hastings in September received a Present of ten lacks of Oude sicca rupees. That was the *nominal value*. It was made in bills, and when those bills were turned into cash, and that cash brought into Bengal currency, then the *real value* would be known; and it appears in evidence, that the Present *netted* ten lacks thirty-three thousand rupees and a fraction, about one hundred and three thousand pounds. The meaning of the words "nominal value" cannot be misunderstood by any Noble Lord who will exercise his own judgment.

If the Learned Manager [Mr. ANSTUETHER] who asserted that before the 20th of January 1782 the whole of this Present had been received, except a small balance, could have proved this assertion true, I know not to what use he could have applied a fact so proved.

But, my Lords, it has happened in this, as in so many other instances, that Mr. Hastings is completely justified by the prosecutors evidence.

Mr. Wright from the India House produced the Bengal General Journal for the year 1781-1782. All the Bengal annual accounts commence on the 1st of May of one year, and close on the 30th of April of the next year. This General Journal contained an account of the payment of the Nabob's Present, and it appeared that in October, November, and December 1781, a part of this Present had been paid, not a half of the whole.

Your Lordships will agree therefore, that the expression of Mr. Hastings, "up to "this period of time," was very correct. It further appears, that in January 1782 the sum of four lacks fifty-nine thousand seven hundred and twenty-seven rupees and a fraction was received, and the balance, which was seventy thousand rupees, was completely liquidated in the two following months. But, my Lords, after all this trouble had been taken, it was to no purpose; for though the Manager professedly called Mr. Wright to prove that this Present, except a small balance, was actually received prior to the 20th of January 1782, and though he persisted to the last in asserting that the fact was proved, your Lordships, who judge from evidence, will see that the account proves nothing. Mr. Wright could not tell you from his Journal on what day in January the great payment was made, and your Lordships, as impartial judges, will rather believe it was subsequent to the 20th of January than prior to that day; though, from too much zeal, too much prejudice, or too little attention to the cause, the Managers thought proper to assert what they could not prove. To the Charge itself the point is not of the smallest consequence, nor can the ingenuity of man conceive any end that could have been attained by the transference to the Directors of so silly a falsehood, as the Managers have imputed to Mr. Hastings. But, my Lords, the production of this General Journal for the purpose that I have stated, has placed a piece of evidence in the Appendix to the Minutes, that strikes the Noble and Learned Lord in a point of view so unbecoming, that the Managers, with all their facigacy, have not seen it in the same light.

By turning to it, your Lordships will see that Mr. Wright, after he had produced the General Journal that I have already mentioned, was asked if the book contained an account of the expenditure as well as of the receipt of the Nabob's Present. He said it did—and he read several items of the expenditure. According to your Lordships rule, the whole account of the expenditure as well as the receipt was entered in the Appendix. Referring to this account, the Noble and Learned Lord says, that Mr. Hastings appears not to have accounted for one lack and a half of rupees of the Nabob's Present, and that there are among the disbursements four lacks sent to the Resident of Benares, which sums might have been paid back again to Mr. Hastings. I profess, my Lords, I was very much astonished indeed to hear such a remark
from

from such a quarter. In the first place, it applies to no matter in charge. It does not even apply to any observation that fell from the Managers, who did not call Mr. Wright in order to enquire about the balance, but to prove the unimportant fact that I have already too much enlarged upon. The ground now taken by the Noble and Learned Lord could not possibly have occurred to Mr. Hastings or to his Counsel; but your Lordships, by turning to the Appendix, will see the case in a moment. It contains the Durbar accounts of Mr. Hastings for one complete year, 1781-2. The nature of this account I will endeavour to explain. The Governor-General is entrusted with a variety of public disbursements, independent of the Board—secret services—the pay and entertainment of foreign Ministers—presents—kellauts, &c. To meet these disbursements the Governor-General applies to the Council for money, which he cannot receive but by their order on the treasury; for though Mr. Hastings received Presents while he was absent from Calcutta, and gave the Company credit for them, yet when in Calcutta he paid all his Presents into the treasury, from whence he could not draw them again.

It appears then by the Durbar account in the Appendix, that between the 1st of May 1781 and the 30th of April 1782 Mr. Hastings received the sum of fifteen lacks twenty-two thousand seven hundred and forty-six rupees and a fraction. Of this sum only fifteen thousand rupees was received from the treasury. The remainder consisted of the Presents that he received, or money borrowed at Benares and from the Resident at Oude. His expenditure for the public service in the same period is thirteen lacks seventy-eight thousand one hundred and twenty-six rupees and a fraction. This, your Lordships observe, leaves a balance of nearly a lack and a half of rupees in his hands, belonging to the Company. If a suspicion had even been hinted during the trial that this balance was unaccounted for, he most undoubtedly would have produced the Durbar account for the next year; and the first article entered in May 1782 would have been this lack and a half as against Mr. Hastings. I had the curiosity to look at the Durbar accounts down to the 1st of February 1785, when he quitted India, and I find that they are exactly balanced.

I believe, my Lords, I have now mentioned all the evidence that is of any mo-

PART VIII.

ment in the three Charges; I mean the Presents from Patna, Nundolol, and the Nabob-Vizier. They are all, strictly speaking, of the same description. They were all received by Mr. Hastings, as he states, for the Company, at a period of great public distress: they were all entered in the treasury books under the head of Durbar Charges, that is, Presents received by Mr. Hastings on the Company's account. That they have been faithfully applied to the public service is not to be disputed, and, in my judgment, there is nothing in the evidence that can induce your Lordships to believe he received these Presents corruptly; that is, I cannot think we are warranted, either by evidence or by fair inference, to believe that to be true which the Managers so strenuously urged—I mean, my Lords, that at the time these Presents were received, Mr. Hastings did intend to take them to himself, though he afterwards changed his intentions, and gave them to the Company. If in my conscience I drew such a conclusion, or if I thought that *for a single moment* he entertained such an idea, I should at once pronounce him *GUILTY*.

The Patna Present, as your Lordships will recollect, was paid into the public treasury on the 26th of April 1781, under the head of Durbar Charges, so that Mr. Hastings had no longer any concern with it. He could not draw the money out of the treasury again, and the receipt appears by the treasury books which arrived in England in July 1782. The two Presents from the Nabob and Nundolol were accounted for in the manner that I have already stated to your Lordships, while he was absent from Calcutta.

The Present from Nobkissen, which is the only one remaining, stands upon a ground somewhat different; for though it was certainly received for the East India Company, and the appropriation of it was left completely in their power, yet it was attended, in the mode of receipt, with circumstances which do distinguish it from the other receipts of Presents. In so far I perfectly agree with the Noble Earl (Mansfield), whose opinions I am at all times disposed to consider with the utmost attention. The Noble Earl conceives that each receipt of a Present by Mr. Hastings was a breach of the law, but that the known and urgent necessities of the Public at the time the Presents were received, and their appropriation to the relief

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of

of those necessities, justified the receipt of every Present, except the last. In the last instance the Noble Earl says, that Mr. Hastings took the money, if not for his own use, certainly for his own convenience.

The Charge sets forth, that in the year 1783 Mr. Hastings first fraudulently solicited as a loan from Nobkissen the sum of three lacks of rupees; that he afterwards corruptly retained it as a gift or Present, under the pretence of discharging certain expences which he had no authority to incur either before or since, and that he has not produced sufficient vouchers to justify his charges.

The Managers, on first opening it, declared that they should offer no evidence upon it:—*Ex ore tuo* the justification or condemnation shall proceed: In the progress of the trial, however, further evidence was given by the Managers, and I will endeavour to state to your Lordships the result of the whole, as it strikes my mind.

Mr. Hastings says, that in 1783, being in want of money for his private expences, owing to the Company not having cash in their treasury to pay his salary, he borrowed three lacks of rupees from Nobkissen.

I will take the liberty to call your attention to the evidence adduced by the Managers, in order to prove the falsehood of this assertion. It is the more necessary, because the Noble and Learned Lord has expressed his surprise that the Governor-General should have any arrear of salary due to him, and in such a manner as to convey an idea to your Lordships, that the Noble and Learned Lord very much doubted whether a Governor-General could suffer his salary to run in arrear. I admit it to be an extraordinary case. Possibly Mr. Hastings conceived that when the different armies in India were enduring the deepest distress for their subsistence, when the officers had coined their plate to support their soldiers as long as they could be supported by such a resource, and when the civil establishments were many months in arrears, it would not be very decent or laudable in him to exert the influence which his station certainly gave him in order to be paid in cash, month by month. Of the fact your Lordships can have no doubt, since the Managers in this, as in so many other

instances, have effectually justified Mr. Hastings by the evidence which they produced. Whether your Lordships are to give credit to the Managers for an extraordinary degree of candour, or to believe that those prejudices which naturally attach upon prosecutors have perverted their judgement, or whether they have trusted the production of their evidence entirely to their Agents, and were as ignorant as your Lordships of its contents until read at your bar, I know not, nor is it of much moment to us to discover; but, by turning to your Minutes, your Lordships will find an account of all the payments made to Mr. Hastings under the head of Salary in the year 1783. You will see that he did not receive the salary due to him for January, until the month of August: so that in truth he was seven months in arrear until that payment was made. Your Lordships will see that his salary for February and March was paid in September, not in cash but by transfer; that is, by a treasury order, or paper, which might indeed be turned into cash, at the discount of the day; and I believe those transfers at that time bore a discount of ten or twelve per cent. The account is continued; and your Lordships will see, if you take the trouble to turn to it, that in the whole of the year 1783, Mr. Hastings received but one month's salary in cash; that was for the month of January, and it was paid to him in August.

The next point is, my Lords, that Mr. Hastings desired Nobkissen to call upon him for a bond properly filled up; but as he was going to execute it, Nobkissen requested him rather to accept the money, than to execute the bond. He neither, as he says, accepted nor refused the Present, and his mind remained suspended until he went to Lucknow in 1784, when he determined to accept the Present for the Company.

This is the account given by Mr. Hastings to the House of Commons, and the Noble and Learned Lord says it must be taken as the true state of the transaction. It was written by himself, he says, is very short, and involves in it little of argument or detail. On the point of fact I wish to set the Noble and Learned Lord right: It is clearly in proof that this part of the Defence of Mr. Hastings was not written
by

by himself, but by a gentleman of the name of Baber; and your Lordships, by referring to the evidence of Mr. Scott, which is very full and distinct, will observe, that the general introduction, the charges called the Rohilla war, and the King's tribute, were all that Mr. Hastings wrote himself. I mention this in order to account for the very loose, general, and inaccurate manner in which the transaction is related. Undoubtedly, if we had had no other evidence, I should not think any Noble Lord determined improperly if he concluded that in fact Mr. Hastings took the money from Nobkissen without giving him any security of any kind for it; but Mr. Larkins, whom the Managers themselves examined at a very considerable length to this point, clearly and distinctly told your Lordships that he knew there were two bonds at least executed; that it was by no means certain that he himself was not a subscribing witness to those bonds; that he gave them, after Mr. Hastings had executed them, to a sircar of Cantoo Baboo's to carry them to Nobkissen; that these three lacks of rupees were entered in the private books of Mr. Hastings as a loan, for which bonds were granted; and that they remained in that state in his books until the month of February 1784, when he made an entry in the books to correspond exactly with the letter which Mr. Hastings wrote in that month to the Court of Directors. From that time it became a Present made to Mr. Hastings, and accepted by him for the Company. He became accountable, consequently, to them for this Present.

There is no evidence from which your Lordships can conclude that Mr. Hastings determined to take the money, until the moment he transferred it to the Company. That Nobkissen was in possession of the bonds appears clear to me from Mr. Larkins's evidence: when they were returned to Mr. Hastings by Nobkissen does not appear, though Mr. Larkins says it was long after they were sent to him. There certainly is no ground to conclude that this loan was fraudulently solicited, as the Charge states, nor do I well comprehend the meaning of the word here. Mr. Hastings borrowed money, and gave a legal security for it. The party from whom the money was borrowed retained possession of that security until he voluntarily surrendered it. Mr. Larkins believes that Mr. Hastings borrowed this money to pay off other bonds, because,

says the witness, Mr. Hastings was perpetually embarrassing himself by doing acts of kindness to others.

The latter part of the Charge is very material for your Lordships consideration. Mr. Hastings in effect is accused of converting this money to his own use under a false pretence. It is said that he had no authority to contract the expences which he opposed to these three lacks, before he made the charge upon the Company; that he has had no authority since; and that he has not produced sufficient vouchers to justify him in making such a charge upon the Company.

The Case will stand perfectly clear, when fairly stated from the evidence. Mr. Hastings admits, in February 1784, that he has in his hands three lacks of rupees, the property of the Company. He submits to the justice of the Company certain demands which he has upon them to the amount of those three lacks of rupees. My Lords, it depended upon the Company to allow them or not, as they pleased. The nature of the demands is explained most clearly. The accounts are minutely particular; and Mr. Hastings, so far from affecting disguise, very fairly and candidly tells the Company, that when these expences were incurred, he had no idea of charging them to the Company. His words are so clear, and convey his sentiments so fully, that I will beg leave to read the remainder of the sentence from the letter itself:

"Imprudent for myself, zealous for the honour of my country and the credit and interest of my employers, I seldom permitted any prospects of future to enter into the views of my private concerns. In the undisturbed exercise of the faculties which appertained to the active season of my life, I confined all my regards to my public character, and reckoned on a fund of years to come for its duration. The infirmities of life have since succeeded, and I have lately received more than one severe warning to retire from a scene to which my bodily strength is no longer equal, and which threatens me with a corresponding decay in whatever powers of mind I once possessed to discharge the laborious duties and hard vicissitudes of my station. With this change in my condition I am compelled to depart from that liberal plan which I originally adopted, and to claim from your justice, for you have forbid me to appeal to your generosity.

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"the discharge of a debt which I can
"with the most scrupulous integrity aver
"to be justly my due."

Your Lordships will determine, whether in point of fact Mr. Hastings went one step beyond what he himself states: "I humbly submit (he says in the same letter) the propriety of carrying these expences to your account." He clearly left it to the Company to allow them or not. Suppose for a moment they had said, "You ought to have made these demands month by month. We will not admit a contingent bill of so many years standing." In that event Mr. Hastings must have repaid to the Company those three lacks of rupees, their property, which he retained in his hands. But the Charge adds, that he has had no authority *since*. My Lords, what is the period of time within which a demand, not objected to, shall be taken as fairly admitted? The letter, with the account in question, arrived in England in September 1784. What were the Directors about? What were the King's India Ministers doing? A pointed reference, an appeal to the justice, was made by Mr. Hastings. It was their duty to have disallowed these charges immediately, if they were improperly made.—It was their duty to call for vouchers, or further information, if further information was necessary. By doing neither the one nor the other, they admitted the demands to be perfectly fair and reasonable, and in effect they audited the accounts. The Counsel of Mr. Hastings have proved that his successors have made similar charges, and upon rather a larger scale of expence; that they have made them, I admit, wisely and properly, month by month, and have received the amount as regularly as their salaries. Had Mr. Hastings acted with equal prudence and propriety, he not only would have been paid the full amount of the charge that he drew out in 1784, but he would have had a considerable benefit from the interest accruing upon the several sums in the course of so many years.

I have now gone through this very important article of the Charge. I have stated the effect of the evidence as it strikes my mind, and at a length which I am afraid has too much trespassed upon your Lordships indulgence. On the last case, that of Nobkissen, your Lordships have had more information from Mr. Larkins than you possessed before. He satisfactorily enough, I think, accounted for the embarrassments of Mr. Hastings.

It might indeed very naturally excite surprise, that a man, after possessing the government of Bengal for so many years, and who was not personally expensive, should want at any time to borrow money. I think it reflects discredit on Mr. Hastings; I think it is the weak part of his character; and that he ought to have left Bengal fairly and honourably possessed of four hundred thousand pounds from the known and allowed emoluments of his office, and the accumulating interest upon his fortune. Mr. Larkins has told you that he never could get Mr. Hastings to attend to his private affairs, and he has told you also that he was perpetually embarrassing himself by doing acts of kindness to individuals. The Commons, it is true, have charged that the several criminal acts alledged in the Articles were done with a view of acquiring for himself exorbitant wealth: but when his Counsel called the gentleman who managed his money affairs in England, on a joint trust with Sir Francis Sykes and Mr. Waller, and when that gentleman distinctly stated the amount of his fortune at different periods, and when he further stated that he neither knew nor did he believe that Mr. Hastings remitted any money to England or to Europe except to these three gentlemen, the Managers did not think proper to ask him a single question. Mr. Larkins, as your Lordships know, managed his money concerns in India. He also was examined at considerable length on all other points by the Managers, except as to the amount of the private fortune of Mr. Hastings. Your Lordships therefore can have no reason from the evidence to doubt the truth of Mr. Hastings's representation, that on considering the state of his fortune in February 1784, he determined to submit to the Company the demand which he conceived to be justly due to him, and at the same time he determined to accept as a Present what to that moment he had considered as a loan. How far Mr. Hastings acted strictly right in transferring to the Company a Present which from gratitude and personal attachment was made to himself, is not a matter in charge, and therefore I shall not dwell at all upon it. I have understood that Nobkissen was the Persian preceptor of Mr. Hastings so far back as the year 1750, when they were both very young men; and that Nobkissen was indebted for his elevation, his present high rank and great fortune, to his early connexion with Mr. Hastings, which introduced him

to the notice of Lord Clive, during whose administration he only stood inferior in point of emoluments, or in political consequence, to Mahomed Reza Cawn.

There are two points of view in which the Managers have considered the second part of the Charge of Presents. I have already stated to your Lordships why, in my opinion, it is impossible to consider them as bribes; in fact, not being so charged, we cannot so determine upon them.

The Managers, and particularly the Manager [Mr. Fox] who summed up the evidence in reply, contended, that from the contradictory accounts which Mr. Hastings had given of these Presents, it was clear that he intended for a time to keep them to his own use. I draw the contrary conclusion from the evidence undoubtedly. It is absolutely impossible that a guilty man would have displayed the eagerness to discover his own guilt that Mr. Hastings has done. The contradictions prove excessive carelessness indeed, but acquit him of every suspicion of corruption, in my mind. If any Noble Lord conceive, from the evidence, and the fair inference arising from it, that Mr. Hastings at the time he took these Presents did not *bona fide* apply them to the Company's service, then most unquestionably he took them corruptly, and no subsequent appropriation of them to the public service can wipe away his guilt.

The Noble and Learned Lord is certainly mistaken in calling Nobkissen a money-lender, supposing him to apply the expression in the sense generally attached to it.

The next point that the Managers stated, and which seems to meet the opinion of the Noble Earl (Mansfield), is, that these Presents, though received with the purest intention, and though applied, as Mr. Hastings says they were, immediately to the public service, were received in breach of a positive law, and consequently Mr. Hastings must be convicted of a breach of that law.

My Lords, I am not reduced to the necessity of troubling you long upon this part of the case. I shall only say, that it is clearly in evidence that the King's Ministers, the Court of Directors, and every person in India, put a different construction upon the law; but whether they were right or wrong, a doubt does not remain as to the repeal of the law alluded to by the Manager. Prior to the 11th of

January 1787, Mr. Hastings might have been prosecuted or impeached for the mere receipt of Presents under the Act of 1773, and it would then have been an argument, whether the Act of 1773 meant to exclude a Governor-General from receiving Presents, and appropriating them to the public service. But the clause on which the Manager relied being repealed prior to the Impeachment, certainly the mere breach of the law is no longer a question; and if your Lordships are of opinion that Mr. Hastings received these several Presents, intending at the time he did receive them to apply the whole to the public service, he must be acquitted. I am justified in my opinion upon this point by very great authorities; and I have no hesitation in affirming, that the clause of the Act of the 13th, which rendered the receipt of the Presents an indictable offence, is wholly repealed by the Act of the 24th of his present Majesty. I shall therefore only detain your Lordships while I move, "That the Commons have made good the First Article, in so far as relates to a Present or obligation received from Kellaram for four lacks of rupees."

The Lord Chancellor said, that having, when their Lordships last sat in the Committee, taken up a considerable portion of their time in going through the various Charges, which the Noble and Learned Lord had so circumstantially detailed, he did not rise to go over them again, but to shew their Lordships, that according to the statements to be collected from the evidence, and from the Defence of Mr. Hastings, it did not appear that the whole of the money received from Kellaram and Cullian Sing, from Nundool and from Dinagepore, had been accounted for by the Defendant. His Lordship then recapitulated the parts of the evidence to which he had referred in his former speech on the subject, and contended that nothing the Noble and Learned Lord had either alleged as given in proof in Westminster Hall, or argued upon as matter of inference, amounted to anything demonstrative, that the aggregate receipt had been entirely appropriated to the Company's service. He reminded their Lordships that he had on the former day shewn that there were two different ways of making up an account of the appropriation of the whole of the money taken in the instances he had mentioned. According to one of them, only five lacks and a half out of nine could be stated to be brought to account, and applied

plied to the Company's service; according to the other, six lacks might be supposed to be accounted for.

Upon the question being put, the Chairman declared the *Not-Contents* had it.

Lord Thurlow then moved a second question, respecting the money received from Nundolol—when the Chairman again declared the *Not-Contents* had it.

Lord Thurlow moved a third question on the subject of the Present from the Nabob-Vizier.

The Lord Chancellor said, that he would make no observation on this Charge, having already troubled their Lordships too long upon it; but he rose to reply to what had fallen from the Noble and Learned Lord relative to the account of Durbar Charges; and he still contended, that from those accounts it clearly appeared, that from the Presents received by Mr. Hastings there was a balance of nearly a lack and a half of rupees in his hands unaccounted for—that this Durbar account was not sent home until October 1783; therefore it was clear Mr. Hastings to that time had the money in his hands, and, for aught that appeared, he had it at this moment.

Mr. Cowper (the Clerk-assistant) whispered across the table, that the Managers had not produced the Durbar accounts in order to shew that any balance remained in Mr. Hastings's hands, but to prove that on the 20th of January 1782 Mr. Hastings had received nearly the whole of the Nabob's Present. The Lord Chancellor said, he was obliged to Mr. Cowper for his information; that he was well aware of the purpose for which the Managers introduced it; but being evidence, it was open to him to state to the Court the sense in which it struck him, and the effect it had upon his mind.

Lord Thurlow said, he was sorry again to intrude upon their Lordships; but this was a matter which had been so very much misconceived by the Noble and Learned Lord, that he was anxious to explain it, when he trusted he should be able to do completely to his satisfaction. Hence, continued his Lordship, from the high situation which he now fills, and which I had formerly the honour to hold, we have been continually in the habit of considering the nature of accounts. In the present case I do not admit that evidence produced for one purpose can be considered in another point of view. If the Managers had believed that Mr. Hastings had not said, as appeared to the Com-

pany for all the Presents he received, they undoubtedly would have made the omission a matter of Charge, and it would have been a very serious accusation. But it does not appear that either the Managers or the Commons conceived there was ground even to suspect that Mr. Hastings had not *bona fide* accounted for all the Presents to the Company. Is it to be believed that the Court of Directors or the Board of Controll would have asked no explanation of Mr. Hastings, if it appeared on the face of a public account that Mr. Hastings had a lack and a half of rupees belonging to them in his possession? Your Lordships will see that these accounts only go to a given period, from the 1st of May 1781 to the 30th of April 1782, and in that given period it appears that Mr. Hastings received about one hundred and fifty thousand pounds of the public money, and expended in the public service about one hundred and thirty-five thousand pounds; consequently, in the accounts of the next year, he must either have expended fifteen thousand pounds in the public service, or he must have paid that sum into the treasury. From the instant he charged himself with the receipt of one hundred and fifty thousand pounds, the Council in Bengal and the Company at home would take care that he paid that money into the treasury, or accounted for the expenditure of it in the public service. Had a doubt been even hinted on this subject, while the parties were at your Lordships bar, the production of Mr. Hastings's Durbar accounts for the next year would have removed them instantly; for in May 1782 he charges himself with the balance of fifteen thousand pounds, and satisfactorily accounts for it in the succeeding months. But the Learned Lord says, that this account is not sent home until October 1783, and consequently Mr. Hastings retained the balance to that time. I am sure the Noble Lord will immediately discover his error. The book produced by Mr. Wright was the Bengal General Journal for the year 1781-2. Though it is the custom to send home, as appears by Mr. Larkins's letters, running treasury accounts every year, if not by every ship, yet the general books are always considerably in arrears; and this General Journal, which is a book of great size, containing many hundred pages, was not sent to England until Oct. 1783, and on that day its contents were authenticated by the signatures of the Governor-General and Council. It is not an account down to Oct. 1783,

it begins on the 1st of May 1781, and ends the 30th of April 1782. I am sure the Learned Lord must now see what an erroneous opinion he has formed.

The Lord Chancellor still seemed to think that his former argument had not been fully answered; and that there yet remained a lack and a half of the Vizier's Prelent unaccounted for by Mr. Hastings.

The Archbishop of York said, that in his time he had been a great reader of ancient history, and the present conversation reminded him of the case of Cato the Censor, one of the honestest and best men that the Roman republic had ever produced. Yet that great man, after having filled the first offices in the State with the highest reputation, was impeached. He was impeached forty times, and he was attacked by a factious demagogue of his day, relative to the *item* of an account. When last impeached he was eighty years of age, and he reminded his prosecutors, that a generation of men who had not witnessed his services were prosecuting him for trifles. What was the case of Mr. Hastings? No consideration for his high character—no consideration for his splendid and important services—for the esteem, love, and veneration in which he was held by the millions that he governed for so many years. No, my Lords, he is treated not as if he were a gentleman, whose cause is before you, but as if you were trying a horse-stealer.

The Lord Chancellor said, there was no Noble Lord present who felt greater respect for the talents and virtues of the Learned Prelate than he did, or who was more disposed to consider with attention anything that fell from so respectable a quarter. But he trusted the Learned Prelate would consider the situation in which he as well as their Lordships stood at that moment. Those who considered the services of the gentleman whose case was before them, to be as splendid and important as the Learned Prelate conceived them to be, would have acted wisely in not preferring the present Impeachment, undoubtedly, provided they could have prevented its being preferred at all. But in the present stage of the proceeding their Lordships were precluded from saying one word of the services of Mr. Hastings, and still more were they precluded from taking them into consideration. They were trying the case alledged, not the person of Mr. Hastings. He was impeached on certain specific Charges, and their Lordships were now to determine between the

Prosecutors and the Defendant, as judges, taking into their consideration the whole of the evidence. It had been determined, and very wisely in his opinion, to take the Charges point by point. While he was delivering his sentiments on any one of those points, he naturally confined his remarks to the subject before him, and in so discharging his conscience, he could not suffer his respect for any Noble Lord to draw him aside from the strict line of his duty; at the same time he could assure the Learned Prelate that he meant no more than to give his sentiments on each point to their Lordships merely to justify himself in their opinions for the vote which he should ultimately give.

The question was called for, and the *Not Contents* had it.

The Chairman (Lord Walsingham) then read the next question.

The Bishop of Rochester said, he could not satisfy his conscience entirely as to the vote he ought to give on the residue of the Sixth Article, all the Charges in which did not stand precisely on the same grounds. With regard to the custom of taking Presents, it had been a custom in the East prevalent in all times, from the most ancient down to the times of the present day. He learnt from that sacred book which it more immediately became him, from the duties of his profession, to study most frequently, that it was the custom of the East to bring Presents to the ruling Prince, and that the custom obtained to such a degree, that to neglect to bring them was considered sufficient to bear out the construction of acting disobediently and contumaciously; and to bring them freely and in abundance was held a proof of the great esteem in which the Sovereign stood with his subjects. The Bishop cited in illustration of his argument, the xth chapter, 27th verse, of the 1st Book of Samuel; and the xth chapter, 24th and 25th verses, of the 1st Book of Kings.

Having laid some stress on this proof of the custom of offering and receiving Presents in the East in the most ancient times, his Lordship said it was not all; that the practice still prevailed in the East; and he saw not how Mr. Hastings could, without offence to those who offered Presents to him, refuse to accept those Presents; and therefore, where he received them in moments of great and urgent State exigency, and applied them to the Company's service, he really saw not how he could reasonably be found guilty of a high crime and misdemeanour. This he thought

thought applied to the various Presents received from Kelloram, Nundolol, and the Vizier; and therefore he had not the smallest difficulty to say *Not-Content* to those Charges.

Nobkissen's case certainly stood on different grounds from the rest. The money was there clearly proved to have been borrowed in the first instance for the private purposes and convenience of Mr. Hastings; and it was in evidence that he had executed bonds, and that they had been given to Canto Baboo to deliver to Nobkissen. It certainly does not appear in evidence when these bonds were re-delivered up and cancelled, but neither does it appear that they were not so delivered up to Mr. Hastings; and therefore the Committee was not intitled to presume an inference not supported by evidence. Mr. Larkins, in his examination, throws some light on the subject, and rather serves to shew that the bonds were regularly and duly executed, and afterwards re-delivered, when Mr. Hastings consented to accept the three lacks as a Present to the Company, rather than as a loan to himself. There was one point of view, however, in which the transaction might be regarded, and that certainly did not place it in the most favourable light for Mr. Hastings: the Bishop said he meant of a transaction between Nobkissen and Mr. Hastings as between a man and his friend. It could scarcely be imagined that when Nobkissen told Mr. Hastings he had rather he would accept the money than execute the bond, he meant to make it a Present to the Company; what he meant was most probably to present it to Mr. Hastings for his own private purpose and convenience, from a sense of obligations that he was under to Mr. Hastings when he was a very young and obscure man. For the Governor-General therefore to turn the money over to the Company as a Present to them, was not using his friend well. The transaction however was not charged in that view of it in the Article, and therefore their Lordships could not travel out of the Impeachment to find guilt in the Defendant; they were bound to judge only of the facts as they were criminally charged, *secundum allegata et probata*. For this, and the other reasons he had stated, his Lordship declared he should say *Not-Content* to the question.

On the question being put, the *Not-Content* had it.

TUESDAY, MARCH 31.

Lord Thurlow rose to state to their Lordships the effect of the evidence as it struck him, which the Commons had given on the Article entitled "Contracts and Allowances." Your Lordships will observe (said Lord Thurlow) that these Charges close the Impeachment; no evidence having been offered on the remaining Articles. I hope therefore that I shall not be under the necessity of going into any great length upon the present occasion. Your Lordships will recollect, that in the preamble to the Impeachment Mr. Hastings is described as "having entertained base and corrupt views of procuring for himself and his dependents exorbitant wealth, and arbitrary designs of raising himself by means of the undue influence so acquired to excessive power, as well to gratify his inordinate ambition as to secure himself from punishment for the many unjustifiable acts by him done and committed."

Your Lordships at one time have heard the gentlemen who held the Contracts and Agencies represented as the dependents of Mr. Hastings, and at another as persons possessing such powerful connexions in England, that, in providing for them, he looked to his own future security.

The Defendant is accused in the Article now before your Lordships of a wanton waste of the public money in five instances only, during a government of thirteen years.

The first is the Opium Contract, granted to Mr. Sullivan in 1781.

The second the Bullock Contract, granted to Mr. Croftes in 1779.

The third the Extra Allowances to Sir Eyre Coote.

The fourth, Mr. Amiel's Agency for supplying Fort St. George with provisions.

And the fifth and the last, Mr. Bell's Agency for laying in extra provisions for the use of the garrison of Fort William in the event of a siege.

The first Charge recites, that having granted the Opium Contract to Mr. John Mackenzie, without advertising for proposals, Mr. Hastings, in the year 1781, granted the same contract to Mr. Sullivan, on terms glaringly extravagant and wantonly profuse, for the purpose of raising an instant fortune for Mr. Sullivan, the son of Lawrence Sullivan, Esq. then, or about that

that time, Chairman of the East India Company: that Sullivan never did execute the contract; but sold it to a Mr. Benn for thirty-five thousand pounds, who sold it to Mr. Young for fourteen thousand nine hundred pounds a year.

This is the first and indeed the only material article in this Charge.

It appears by the evidence, that from a very early period the article of Opium was a monopoly, in the hands of individuals; and from the year 1761 to 1773 the Chief and Council of Patna held it for their private emolument.

Mr. Hastings, who was at Patna in the month of October 1773, after his conference with Sujah Dowlah at Benares, turned his attention to this subject, and was the first person who entertained the idea of converting this monopoly to the public service. In consequence of his letter to the Board in Calcutta, it was determined in Dec. 1773, to grant the exclusive monopoly to a man of the name of Mheer Munner, the agent of the Patna Council, who was to furnish all the Opium that the Bahar province produced at three hundred and twenty sicca rupees the chest, and to deliver it at Calcutta free of all charges. Supposing the average price of Opium at the Company's sales to be 550 rupees the chest, this gave the Company a very large profit, and it did not immediately deprive the Council at Patna of an emolument of office which had existed for so many years, and of which they were not dispossessed by any order from the Court of Directors.

In the spring of 1775 the Supreme Council deliberated upon the mode of managing the opium monopoly in future. This was but a few months after the arrival of General Clavering, Colonel Monson, and Mr. Francis, who felt those honest prejudices very strongly, which the word *monopoly* so naturally and justly excites in the breasts of Englishmen. But after the fullest consideration, they conceived with Mr. Hastings, that, for some time at least, opium must be a monopoly, and consequently it was right that the Public should enjoy the benefit of it. They wrote to the Chief and Council of Patna, requiring their sentiments as to the best mode of collecting the opium revenue in future. Your Lordships will find the answer returned to be exceedingly important. The Patna Board assign unanswerable reasons why the monopoly ought to be continued. They state the price paid for opium lands to the farmer, the price of opium per maund in its

PART VIII.

first state, the expence of manufacturing it; and they say that by the time it is manufactured into cakes, it costs the contractor from 90 to 110 rupees a maund, that is, from 180 to 220 rupees a chest. They say, therefore, that if it were contracted for by the Company at 230 or 240 rupees a chest, it would yield an immense profit to the Company, and they think, with the laws fully enforced against smugglers of opium, three thousand three hundred chests might annually be produced.

They tell the Governor-General that these observations are the result of the strictest inquiries, and that they have no view to their own private advantage in advising the Governor-General and Council to contract for the purchase of opium at 230 or 240 rupees the chest.

After the receipt of this letter, Mr. Hastings proposed that the whole produce of opium should be manufactured for the Company's use; that strict measures should be used to prevent smuggling; that the Chief and Council of Patna, or an individual, if the Board preferred the latter, should provide all the opium by agency, and be allowed a certain commission on the sum ultimately netted by the Company from the sale of the opium in Calcutta. My Lords, this proposition is well worthy your attention: and your Lordships will see the reasons assigned by Mr. Hastings for preferring an Agency to a Contract; and by carrying his principle to another branch of revenue, I mean the Salt, in the year 1780, he created a revenue where none existed before, and which amounts now to above nine hundred thousand pounds a year.

The majority determined, however, that the opium should not be provided by agency but by contract, and an advertisement was accordingly issued, inviting all persons to offer proposals. There were thirteen different offers, and the lowest were accepted—a Mr. Griffith for the Bahar opium, and a Mr. Wilton for the opium, all of which is of an inferior quality, produced in Bengal. The reasoning of the different members of the Board clearly shews that they conceived they had really fixed the contract upon the fairest terms, leaving a very considerable profit to the Company, and a very moderate one only to the contractor. Mr. Francis, in describing the peculiar nature of this contract, and the power which the contractor was necessarily invested with, says, he thinks it unadvisable to engage on very low terms with any contractor.

tractor. I beg your Lordships will give this remark the consideration it deserves, for I am convinced that every Member entertained the same sentiments, and it never did occur to any one of them that the general orders of the Company for making contracts annual, and granting them to the lowest bidder could apply to this branch of public revenue.

Before the expiration of the year, for which period the contracts were granted to Mr. Griffith and Mr. Wilton, the Governor-General and Council, on their application, continued the contract to them for another year. Here, my Lords, was the first disobedience to orders, and here the Charge, on the principles in which it is drawn, *ought to have commenced*—but the Managers and the Directors have passed silently over *this instance* of disobedience.

In the Spring of the year 1777, Mr. Mackenzie, a gentleman who was but just arrived in Bengal, applied to the Governor-General and Council, and offered to take the opium contract for three years on the terms that Mr. Griffith and Mr. Wilton had held it, with this difference, that he engaged to pay the Company ten thousand sicca rupees a year, as a condition for any advances of cash that he might want, in order to fulfil his contract within the year. The Board instantly agreed to accept Mr. Mackenzie's proposals. It neither occurred to General Clavering nor to any other Member, that this contract ought to be exposed again to the competition of the adventurers abounding in Bengal. If it were very unadvisable, as Mr. Francis states, to contract on very low terms in 1775, it was equally so in 1777; and the Board then conceived that the fair price was fixed.

Though General Clavering proposed to insert a clause in the contract of Mackenzie, that it should determine, provided the Court of Directors thought proper to abolish the monopoly all together, he made no sort of objection to the terms of the contract, nor to the period of three years for which it was granted. Yet General Clavering, of whose merits as a soldier, and of whose unfulfilled honour as a gentleman, I have the highest opinion, was at all times, as your Lordships well know, a strenuous advocate for a literal obedience of the Company's orders as to the mode of making contracts.

Before Mr. Mackenzie's contract expired, a letter was received from the Court of Directors, dated the 23d De-

cember 1778, to which I beg leave to refer your Lordships. It really appears to me, that they took up the subject, which it appears from their letter they did not understand, more with a view of finding fault, whether with or without cause, than from any other motive. They tell the Governor-General and Council, that after the experience of two years in providing opium by contract, they should have ascertained whether the price thitherto paid was reasonable, by advertising for other proposals, or have made previous enquiry; but as it appears to them they did neither, they must disapprove of their conduct on that occasion.

It is absolutely impossible, my Lords, that the Directors could have written such a paragraph if they had read, or, having read, if they had considered, the steps taken by the Government of Bengal on this subject. It never occurred to the Directors to make the opium monopoly a branch of the public revenue. They were solely indebted for it to the care and attention of Mr. Hastings. The mode proposed by Mr. Hastings in 1775 would have enabled the Board to know exactly the value of opium. He proposed to conduct the business by agency, and that agency to be placed in the hands of a man of honour. The Company, if his idea had been adopted, would have known the full value of the opium monopoly, as well as, under a similar system adopted by Mr. Hastings, they now know the value of the salt monopoly. The majority preferred the mode of conducting the business by contract, and Mr. Griffith got it as the lowest bidder—one hundred and eighty rupees the chest, with some small additions. Your Lordships will see that this was considerably below the price which the Patna Council supposed it would actually cost the contractor. The Board were at least justified from their information in believing that they had made as good a bargain for the Company as ought to have been made, consistently with Mr. Francis's principle, which seems to have been the principle of every Member. The letter of the Directors, on which the Managers laid so much stress, goes upon false grounds, upon an idea that no previous inquiries had been made, when in truth every pains had been taken to acquire an accurate knowledge of the subject prior to the grant of the first contract to Mr. Griffith. Under all the circumstances therefore, I think that the Governor-General and Council were clearly right in granting the contract to Mackenzie

kenzie in 1777, without advertising for fresh proposals. But it is necessary to remind your Lordships of one very material piece of evidence which the Managers omitted to bring forward. The letter from the Directors arrived in Bengal at the close of 1779, condemning Mackenzie's contract. In April 1780, Mr. Mackenzie applied to the Board for a renewal of his contract for another year, and his request was instantly granted. The Members of the Board at that time were Mr. Hastings, Mr. Francis, and Mr. Wheeler, the two last gentlemen forming the majority. The Commons by some strange accident have passed over this instance of disobedience of orders; if it had been noticed, Mr. Francis undoubtedly would have said, that the Directors had condemned Mackenzie's contract only under the idea that previous enquiries had not been made; whereas, in point of fact, the subject had been fully investigated, and consequently the condemnation, being founded on a misapprehension of the Directors, had not influenced him in 1780, when he consented to renew the contract to Mackenzie. I say, my Lords, it was by a very unfortunate accident that the Commons forgot altogether to notice this second contract of Mr. Mackenzie, because it deprived Mr. Hastings of the able assistance which Mr. Francis could have given in defence of the measure.

I now come to the only Contract which is charged to be criminal, and your Lordships will judge whether in any one point it differs from those contracts which are not charged to be so.

In the month of May 1781 Mr. Hastings proposed that the opium contract should be granted to Mr. Sullivan for four years, on the same terms that Mr. Mackenzie had held it. The terms of the two contracts being the same, the period for which they were held being the same, I am utterly at a loss to know on what grounds Mr. Hastings is charged with granting the latter contract on terms "glaringly extravagant and wantonly profuse." Mr. Griffith and Mr. Wilton held the contract for two years, not as a matter of favour the first year, but because they were the lowest of thirteen bidders. The second year they held it by an act of the Supreme Council, in the same manner that Mr. Mackenzie and Mr. Sullivan afterwards held it. The Charge indeed states that it was granted to Mr. Sullivan for the purpose of creating

an instant fortune for him; but there is no proof that this was the case; on the contrary, it is fully established, both by the positive denial of Mr. Hastings, and by the evidence of Mr. Benn, that of the transaction which the Managers had proved, Mr. Hastings was utterly ignorant. It appears that Mr. Sullivan sold this contract to Mr. Benn for thirty-five thousand pounds, and that Mr. Benn resold it to Mr. Young for fourteen thousand nine hundred pounds a year, which gave Mr. Sullivan and Mr. Benn, between them, a profit of fourteen thousand nine hundred pounds a year, for four years. Unless the Managers could have proved that Mr. Hastings was privy to this bargain and sale, there is not a shadow of difference between the contracts of Mackenzie and Sullivan. The simple question, therefore, will be this; After the Directors had expressed their disapprobation of the first contract granted to Mr. Mackenzie, because it had not been advertised, nor, as it appeared to them, had any previous enquiries been made to ascertain the fair price, was it criminal in Mr. Hastings to grant the contract to Sullivan for four years? I think clearly not; because, after the receipt of the Directors letter, the Supreme Council gave the contract to Mackenzie for a fourth year, and because, as I have already stated, the Directors were manifestly in an error, when they supposed that no previous enquiries had been made to fix the fair value of the contract. That the Governor-General and Council were deceived, is perfectly true; but the error was general. Your Lordships will recollect the letter of the Patna Board, whose members positively affirm, that opium could not be made but from one hundred and eighty to two hundred and twenty rupees a chest, the average price being two hundred rupees. You have had a gentleman at your bar, Mr. Law, who was many years a member of the Patna Council. He has told you, that when it was a monopoly for the advantage of the Patna Council, they gave two hundred rupees a chest for it, which agrees with the information of the Patna Council; so that, with all the advantage of local knowledge, and with all the influence attached to station and power, they gave more for their opium than the Company did under the contracts of Griffith, Mackenzie, and Sullivan. I have reason to believe that the real secret of the profit upon opium was this—that the contractors bought

bought his opium from the ryots by one weight, and sold it to the Company by another.

In truth, my Lords, there is no difference whatsoever between the contracts of Mackenzie and Sullivan; both were granted for the same period of time and on the same terms. The Charge alleges, that Sullivan possessed neither knowledge nor local skill in that particular manufacture. His knowledge must at least have been equal to Mr. Mackenzie's, who was but just arrived in the country when he got the contract. But it is said also in the Charge, that Mr. Sullivan never did execute the contract. The same may be said of Mr. Mackenzie.—Both of them were contractors, and both equally responsible to the Company. Mr. Mackenzie managed the contract through a Mr. Campbell at Patna—Mr. Sullivan through Mr. Young. Suppose it had been proved, which it is very likely was the case, that Mr. Campbell paid a specific sum of money annually to Mr. Mackenzie for this contract; would that circumstance reflect dishonour on the memory of Sir John Clavering, who joined in that unanimous vote by which Mackenzie obtained the contract in 1777? or would it be a reflection on Mr. Francis, who renewed the same contract to him in 1780? Assuredly not. In the case of Mr. Sullivan, the Managers have not advanced one step by proving that Sullivan sold the contract to Benn, and that Benn resold it to Young. Unless they had proved the privy of Mr. Hastings to these transactions, the other circumstances go for nothing.

There are other allegations in the Charge necessary to notice to your Lordships. Mr. Hastings is accused of destroying certain checks fixed by the former contracts, and to have done so in order to make this contract more saleable: one is, that he omitted to insert in Sullivan's contract a material clause in Mackenzie's, that the contract should be void if disapproved by the Directors. If this were a true description of the clause in Mackenzie's contract, the allegation would indeed be well-founded; but the clause in Mackenzie's contract was of a very different description from that stated in the Charge. The contract was to be void, provided the Directors ordered the monopoly to be abolished; and in 1777 it was referred to them to determine whether the monopoly should be continued or not. The Board giving it as their opinion that it must continue. In their letter of

the 23d of December 1778, the Directors acquiesce in the continuance of the monopoly; consequently the clause specifying that the contract was to be void in the event of their abolishing the monopolies, became nugatory.

The next instance in favour of Sullivan is stated to consist in the abolition of the office of Inspector at Patna. My Lords, this was done in Mackenzie's time, when it was found to be an useless and troublesome office there—but it was established in Calcutta, infinitely more to the advantage of the Company, though with additional responsibility to the contractor. This was a sensible change; and the mode adopted in 1780 for inspecting the opium is continued to this day.

Another allegation in the Article is, that for the purpose of advancing money to the contractor, and in order to favour certain individuals, a loan was made in Bengal in the year 1789, and the Company were engaged in a smuggling adventure to China, on the pretence that there was little demand for opium in Calcutta, though, in point of fact, there were persons in Calcutta who had authority to bid for the whole, or the greatest part of the opium.

As the Managers did not attempt to support the last assertion by any proof, I conclude they found out the blunder of the Agent who drew the Article before they came into your Lordships Court. Why the Commons should have charged that the loan which they state was made to favour certain individuals, or to advance money to the contractor, is far beyond my comprehension. The transaction itself is perfectly simple, and, in my opinion, impossible either to be misrepresented or misunderstood.

In the year 1781, the produce of one year's opium was lying unsold in the Company's warehouses in Calcutta, owing to very obvious causes. The tonnage of the port of Calcutta was principally employed in transporting provisions to Madras, and private merchants were afraid to export opium on their own account to China and the Eastern islands, the Indian ocean being at that time infested by French and Dutch cruisers.

Under such circumstances it was proposed to freight two ships with opium on the Company's account; one to Canton, and another to the Eastern islands. The proceeds of these cargoes were to be paid into the Company's treasury at Canton, for the purpose of purchasing teas for the sales at the India House. Upon the cre-

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dit, therefore, of this supply, the Bengal Government conceived they might with propriety draw bills upon the Company, first for ten lacks, and afterwards for a second sum of the same amount. Accordingly a proclamation was issued, advising the civil and military servants of the Company generally, that the treasury in Calcutta was open for the receipt of money for certificates on Canton, which would there be exchanged for bills upon England; and advising all who chose to remit money to send their names to the Secretary at a given period. I was first at a loss to know upon what grounds this plan could have been charged as undertaken with a view to favour certain individuals; but upon referring to the evidence, I found that the Managers have inserted a letter written by Mr. Hastings from Chunar, in which he incloses a list of the names of the civil and military servants of the Company who were then at Chunar, and expresses a hope that they may not be excluded from the advantage of the remittance to Europe. Perhaps it may not be necessary to inform your Lordships, that by the regulations of the Company's service, every person in their civil and military employ has a right to his proportion of a remittance to England through the Company's cash. All therefore that Mr. Hastings did, was to request that the gentlemen then at Chunar might not be deprived of a privilege common to the whole service; and this the Managers have so mistaken, or rather their Agents have so mistaken it, as to charge the loan itself to be made in order to favour certain individuals. The whole scheme, in my opinion, was a very wise and a very laudable one. It gave the Bengal Government the immediate use of twenty lacks or rupees, when the want of money was most severely felt—it enabled them to export a commodity for which there was no sale at Calcutta—it threw a large supply of cash into the treasury at Canton—and it enabled the Company at home to pay the bills exchanged for the certificates sent from Bengal to Canton.

The ship freighted for Canton arrived safe; her cargo was well sold, though to less advantage than it ought to have been—the Supra-cargoes laying the blame upon the Captain of the Bengal ship for not obeying his orders, and he as loudly insisting upon it that it was their fault the opium did not sell at a much higher price. The other ship, freighted to the

at a very high profit indeed, and would have sold the remainder equally well, if she had not been treacherously taken in a neutral port. But, my Lords, this is called a smuggling adventure, because opium is forbidden, by a municipal law of China, to be imported into that country under pain of death. It is proved, however, that this law is obsolete—that opium is publicly landed, and sold in the middle of the day at the port of Canton; and at this moment the greatest encouragement is held out in Bengal for the importation of opium into China, for the purpose of enabling the Supra-cargoes at Canton to purchase teas at the London market. The only question then will be, Whether it was a high crime in Mr. Hastings, during the pressure of the war, to make the Company do that act publicly, which the Directors and the Board of Control have urged the Government of Bengal to endeavour, by every possible means, and to every possible extent, to get done by individual merchants? It was confessedly a temporary expedient in 1781; but it is by no means clear that it would not have been wise in the Company to continue to export opium on their own account. Colonel Watson, the chief engineer at Bengal, who originally suggested the plan, says, that under every disadvantage of a first experiment, and of very great mismanagement, it enabled the Supra-cargoes at Canton, in the height of the war, to purchase several cargoes of tea without draining Bengal of one rupee; that the Company were enabled by it to load all their ships with tea; and finally, became very great gainers at the close of their sales in England. The Colonel adds, that he is aware of all the objections and difficulties then started in Bengal, and also of the animadversions made upon the measure in England; but as they arose out of the private views of interested men, or the dreams of ignorant pretenders, such arguments and observations were no longer worthy the consideration of the Governor-General and Council—their futility having been fully evinced.

Mr. Hastings and his Council tell the Directors, that they well knew of the law which prohibited the importation of opium into China on pain of death; but they also knew that it was a commerce publicly encouraged by the Chinese government. They add, that it was a temporary expedient—when in fact opium would not sell in Calcutta upon any terms; that in future, however, they

shall dispose of their opium in Calcutta; that in the present year, 1783, the profit would be six lacks of rupees, and would have been double, had there not been many French cruizers in the Bay of Bengal. Your Lordships will see how considerably the profits on opium were increased on the restoration of peace in India.

I believe I have already gone thro' every material point in this head of the Article; and as the Managers have totally failed in making good the material allegation, that the Opium Contract was granted to Sullivan for the purpose of creating for him an instant fortune—as it is clearly established by the evidence, that he held it precisely upon the same terms and for the same period that Mackenzie had held it—and as the Governor-General and Council had every reason to believe there was nothing left to the contractor beyond a fair and mercantile profit—I shall certainly say *Not-Content* to the motion which I shall submit to your Lordships on this head of the Charge.

Upon the next point I flatter myself that I shall not have occasion to intrude very long upon your Lordships' indulgence.

The accusation is, that in the year 1779, without any complaint from the contractor or from the army, that a Bullock Contract, then existing, was inadequate for the regular supply of the service; Mr. Hastings annulled an existing contract, and concluded another with Mr. Croftes, his confidential friend and agent, on terms infinitely higher than those of the preceding contract, at an additional expence to the Company of fifty thousand pounds a year, or near that sum; and, by so doing, created a wanton and most enormous expence to the Company. Surely the Agents who drew this Charge have not taken the least pains to examine the evidence which relates to it. Your Lordships have upon your Minutes the strongest written complaints from various commanding officers of the totally unserviceable state of the bullocks of the army; and you have full proof also, that the contractor, dying in 1778, his executor was desirous of relinquishing so unprofitable a concern altogether—that General Soubert, the provincial commander in chief, urged Mr. Hastings and his Council to accept the offer, and to

form a new contract on very different terms.

The Managers begin their evidence by inserting the express order of the Directors, that the contract should be annual, and granted to the lowest bidder.

If to prove that Mr. Hastings disobeyed this express order, be sufficient for his conviction, the Managers have completely succeeded; for the next document they read was the Defence made by Mr. Hastings to this Charge in the House of Commons, in which he very fully admits that he did disobey the order—that he has no idea of orders being issued at the distance of half the globe, of the propriety of which the Government upon the spot must not be allowed to judge before they carry them into execution. He admits also, that by disobeying this order he incurred great responsibility; and was bound to prove that he consulted their interests, when he disobeyed their commands.

Mr. Hastings affirms, that the consequence which attended the disposal of the bullock contract annually to the lowest bidder, was such as your Lordships will believe was extremely natural; men offered to take it on terms so low, that, had the contract been really executed, they must have lost 50 per cent. by their agreement. Mr. Hastings appeals to the public records for proofs of the complaints made by the commanding officers of the army on this important subject—to the revenue consultations, to shew the distress occasioned to the zemindars and farmers, as well as the diminution of the revenue, from the mischievous custom of pressing bullocks, as often as any division of the army was ordered to change its quarters. To remedy these mischiefs, and to provide effectually for that branch of the service, on the due performance of which the success of every operation of war in India depends, Mr. Hastings consulted with the principal officers of the army, and submitted to Sir Eyre Coote a plan for the future supply of bullocks for the service of the army, which that officer fully approved. The plan prescribed the size, age, and feed of the bullocks to be employed; the work they were to perform; the number, uniform, and pay of the drivers. The calculation was made so as to leave a fair mercantile profit.

profit to the contractor; and such checks were established for the due performance of this contract, that the due execution of it appeared to be fully insured. I am sure I know not how the public can be well or faithfully served upon any other principles than those laid down by Mr. Hastings in defence of this contract.

The next evidence adduced by the Managers is that upon which they have entirely relied; I mean the dissent of Mr. Francis to the terms of this contract: a performance of very considerable length, containing many ingenious calculations, which, in theory, may do very well, but happen not to have stood the test of practice.

The opinions of Mr. Francis, as far as I know, are peculiar to himself: and though it be true that the Managers have mentioned them as conclusive against Mr. Hastings, there is no person, who has had an opportunity of acquiring any knowledge upon this subject, that does not totally disagree with Mr. Francis. That gentleman is decidedly of opinion that the Company's orders should be obeyed—that the bullock contract should be annual, and granted to the lowest bidder. He condemns the rates as extravagant, and the number of bullocks as unnecessary. He thinks that the quantity of drivers, so far from being useful, would be highly detrimental to the service: and he closes the whole with this very singular declaration: "In truth I may say (with the exception of a very moderate number), what occasion have we for an establishment of bullocks any where? When they are wanted, they may be hired, or pressed, as in fact they have been hitherto, notwithstanding the contracts."

I speak in the presence of some Noble Persons who know well what military service is, and to whose exertions their country has been much indebted upon former occasions. If one of those Noble Lords were again to be placed at the head of an army, what would he think of a Cabinet Minister who was to tell him, that horses for the service of his artillery, his ammunition waggons, and camp equipage, could not be kept but at a most enormous expence; he must therefore retain none in the service, as he could hire or press them when they were wanted. What would the Noble Marquis have

said to Mr. Cowper, Mr. Stuart, of Mr. Speke, if any of those gentlemen, his colleagues, had told him, when on the point of embarking on that service which he so gloriously terminated, "Do not, for God's sake, my Lord, put the Company to a most enormous expence for bullocks and drivers; you can hire and press them in Mysore!" The Noble Marquis, I believe, would have expressed large surprise at the magnanimity of such sentiments; yet Mr. Francis, *flagrante bello*, when the British army in Bengal occupied a country thirteen hundred miles in length and five hundred in breadth, and having several detachments employed on foreign service, does not scruple to affirm that it is unnecessary to keep up an establishment of bullocks, and that they can be hired or pressed when wanted. My Lords, it did not require the strong evidence adduced by the Defendant's Counsel to convince men of your Lordships' understandings, that no army in India can be deemed fit for service unless an ample supply of bullocks is attached to it. The artillery and ammunition waggons are dragged solely by bullocks. The musquet ammunition is also carried by bullocks; and the camp equipage in part, by bullocks also. The Hon. Manager [Sir JAMES ERSKINE ST. CLAIR] who summed up this Article, afforded your Lordships a proof, that without local experience no man ought to venture to speak of the nature of military service in a distant quarter of the globe. Had that Hon. Manager been as conversant in Indian as I am sure he is in European service, he would not have told your Lordships (and probably on the strength of Mr. Francis's assertion), that if one driver was really entertained for two bullocks, it was an arrangement worse than useless, it was detrimental to the army.

Your Lordships have the fullest evidence to prove that one driver to every pair of bullocks is indispensably necessary; and you are told by the Noble Marquis of the distress which he sustained for the want of a sufficient number of that very useful body of men during his campaigns in Mysore. Colonel Duff, who had the advantage of thirty years experience in India, and commanded the artillery under the Marquis Cornwallis in the campaign against Tippoo Sultan, has decidedly told your Lordships, that the bullocks

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provided under the contract of Mr. Croftes; came under his particular inspection; that they were beyond all comparison the best that ever were in the service before or since; that two drivers to every pair of bullocks were absolutely necessary, and a head driver to every twelve men exceedingly useful; that the number of bullocks was by no means unnecessary; and that they cannot be fit for service until they have been regularly trained and harnessed. In truth, the testimony of Colonel Duff, if unconfirmed by any further evidence, would have fully convinced me, that Mr. Hastings acted wisely and properly in concluding a contract during war, which effectually provided for the strict performance of this most essential part of military service, though the expence had even exceeded fifty thousand pounds a year.

In the year 1779, prior to this contract, Colonel Camac was sent upon service towards the Maratta frontier. He writes to the Board, and says, that his march was impeded by the badness of the bullocks furnished by the contractor; that he could only get seventy at Burdwan; and that all the good bullocks had been sent out of the way or hid. Here is a proof that Mr. Francis was mistaken, when he affirmed that bullocks could be pressed when wanted, even if the cruel distress which such a mode of provision must create, with the consequent diminution of the public revenues, were to be no part of the consideration of Government. Colonel Camac adds, that, from the want of bullocks and the desertion of the drivers, the ammunition was strewed in the roads, and could not have been saved but by the great exertion of the artillery officers, to whom the Colonel was obliged to give sixty sepoy to act as bullock drivers.

Every inconvenience which the service had sustained for so many years, this contract was intended to remedy, and it is in proof that the remedy was effectual. The Directors very much approved of all the regulations, but they thought that the contract should have been advertised, though it is obvious to any man of common sense, that under a contract so advertised, no such reform could have been effected. It appears also in evidence, that during the war, the number contracted for never suited for the service, and

that extra bullocks were always employed.

The next allegation is, that though the Directors had condemned this contract in strong and pointed terms, and had ordered, that one year before its expiration, advertisements should be issued for proposals for a new contract upon the lowest terms, Mr. Hastings neglected to give such notice, by which neglect the contractor had a right to hold his contract for six years, and that the relinquishment of this contract was purchased upon terms almost as extravagant as the contract itself; that he then turned the contract into an Agency, though the Directors had condemned Agencies, as uncertain and indefinite in their expences, and where influence was likely to prevail over public advantage.

The facts, as applied to this part of the Charge, in my opinion may be stated very shortly. By a neglect which ought not to be attributed to Mr. Hastings alone, but to the whole Board, no notice was sent to the contractor, Mr. Ferguson (to whom Mr. Croftes had very early assigned the contract), that the Board meant to close the concern at the end of the five years. This gentleman therefore, in January 1784, proposed to relinquish his contract on certain conditions, to which the Board agreed. In the course of the correspondence, Mr. Hastings observed what very erroneous opinions had been formed in England of the nature of this contract; and he laid before the Board a letter from Mr. Ferguson, in which he declares that the advantages attending this contract have been most absurdly magnified in England. He offered to produce his books, which he says will prove, and his book-keeper attests the truth of the declaration, that his profits did not exceed 15 per cent, and he adds, that, if the Marattas had entered Bengal, as was expected, he must have been ruined. No man will conceive that 15 per cent, in such a concern, and subject to such a risk, is in any respect an unreasonable profit. Mr. Ferguson, who was a merchant of high character in Calcutta, and who arrived in England during this trial, died before the Defence was entered upon, or he might have confirmed the truth of his letter, by his own testimony, at your Lordships bar.

The Managers have given in evidence

hence a letter written by Mr. Hastings to the Directors in August 1785 from Cheltenham, in order, as they state, to prove his inconsistency; because in that letter he most strenuously recommends that bullocks shall in future be provided by agency; all contracts, he says, are improvident, and that the contract concluded on the *lowest terms*, is always the *most extravagant*.

For my part, I can perceive nothing like inconsistency in this opinion. On the contrary, I observe, that Mr. Hastings at all times, and upon all occasions, preferred agencies to contracts.

In the business of the opium, it was recommended by Mr. Hastings that it should be procured by agency. The salt was made and sold under an agency, and by that means nearly a million was added by Mr. Hastings to the annual revenues of Bengal. The marine of Bengal was conducted under an agency; and I shall still have occasion to intrude upon your Lordships indulgence, by stating the two agencies with which the Charge concludes.

There appear to me to be but two modes of providing for the safety and the safety of an army in India, in war: the one by a contract, on such fair and liberal terms as were granted in Mr. Croftes's contract, or by an agency in the hands of men of character and honour. But Mr. Hastings, in the letter alluded to from Cheltenham, and which in all its parts is well worthy your Lordships attention, was not intruding his sentiments upon the Court of Directors. The fact is, that Sir Archibald Campbell, appointed Governor of Madras in 1785, was desired by the Directors, previous to his departure from England, to form military establishments for their several settlements in India. The Directors, when they were formed, thought proper to transmit them to Mr. Hastings, then an unimpeached man, add to desire his sentiments upon them, which he gives at considerable length, and earnestly draws the attention of the Directors to a material part of the military detail, which Sir Archibald Campbell had omitted to notice. He says, that Sir Eyre Coote was unable to prosecute his success in the late war, because, though he often beat, he never was able to pursue Hyder, or to capture his guns, which he often might have done had he had good bullocks, for his own artillery. He therefore strenuously recommends

PART VIII.

that there shall be no more contracts for bullocks, but that they shall be furnished by agency. Your Lordships will perceive that Mr. Hastings alludes to contracts formed on the principle so strenuously contended for by the Court of Directors, namely, annual contracts granted by public advertisement to the lowest bidder. For venturing to look through this favourite arrangement, into the instance of Croftes's contract, which was in truth rather an agency than a contract, because Mr. Hastings himself and Sir Eyre Coote fixed the terms, and the period, and selected the person who was to perform it, he has been impeached by the Commons. The experience of later terms has fully justified Mr. Hastings. The Noble Marquis, when in Mysore, was obliged to procure all the additional bullocks he could get together, and those he put under the charge of an agent of his own nomination, declaring to the Governor and Council of Madras that "he was sorry to say from experience, that the bullock contract had been a delusion of a most dangerous nature to a commander in chief of an army." The Governor and Council of Madras, copying the example of the Noble Marquis, put all the additional bullocks that they could procure under a public agent. The government of Bengal gave their sentiments most decidedly to the Directors in the absence of Lord Cornwallis, in favour of agencies, though they said it was not their intention to contrast with the enormous evils liable to arise from an adherence to the contract system, the advantages derivable, under certain circumstances, from a well-regulated agency; and the Directors themselves, convinced of the great impolicy of their former system, very candidly admit, both in their letters to Bengal and Madras, that the reasons assigned for deviating from the contract system were very satisfactory. Such is the close of this business; and if it shall appear to your Lordships as it does to me, that Mr. Hastings could not have obeyed the orders of the Directors ~~for that~~ without doing to the army, you will consent in negating the motion that I shall have the honour to propose upon this head of the Charge.

The next subject is, the extra allowances granted to Sir Eyre Coote in 1779. Mr. Hastings is charged with adopting this measure with a view to increase his

his own influence ; that it was a disobedience of positive orders ; that allowances to the amount of eight thousand pounds a year had been granted to General Stibbert, provincial commander in chief before Sir Eyre Coote's arrival ; that there was no pretence to continue the allowances to General Stibbert after Sir Eyre Coote's arrival ; but that Mr. Hastings did continue them, and allowed Sir Eyre Coote eighteen thousand pounds a year.

That in direct violation of the treaty subsisting between the Company and the Nabob Vizier, he directed that when Sir Eyre Coote was in Oude these extra allowances should be carried to the debt of his account.

This is the first branch of the Charge : The Defendant has offered neither defence nor observation upon any part of it, but has left it entirely to the judgment of your Lordships, on the case made by the Managers themselves.

In considering this Charge, I confess there are some circumstances which strike me as very singular. The Managers have proved that six thousand pounds a year was the salary fixed for the commander in chief of all the King's and Company's forces in India. When Sir Eyre Coote arrived in Bengal, he proposed that the allowances granted to General Stibbert as provincial commander in chief should devolve upon him ; but on further inquiry, it was found that they had been settled upon him, as the oldest Company's officer in Bengal, and that in fact, of the thirteen thousand pounds a year which General Stibbert received, nine thousand pounds a year were authorised by the Directors, and that their sentiments on the additional allowances granted to him, had not been received, but were daily expected. Sir Eyre Coote therefore proposed that a field establishment might be formed for him and his staff, adequate to his unavoidable additional expences, when absent from Calcutta, as he supposed the Directors, when they appointed him, did not conceive that he was to expend his private fortune in their service. It appeared perfectly clear from Sir Eyre Coote's minute, that General Clavering had reprefented to the Directors, how very inadequate his salary must be for defraying his extraordinary expences out of Calcutta. It is in my opinion beyond a doubt, that in some

mode or other General Clavering must have drawn extra allowances, had he taken the field ; but it so happened, that from October 1774, when Sir John Clavering arrived in Calcutta, to August 1777, when he died, Bengal enjoyed profound peace, and the General never was twenty miles out of Calcutta, and saw no part of the large army he commanded, except the corps quartered in or near the Presidency. In the time of Sir Eyre Coote the case was materially different. He arrived in April 1779, during the war with France, and when a Maratta war was hourly expected. He very wisely and properly determined, in the execution of his duty as commander in chief, to visit the several military stations ; and it could hardly be expected, as Mr. Hastings very justly observed, that he was to perform this expensive service for six thousand pounds a year, when the Directors themselves permitted General Stibbert to draw more than that sum a year for the expence of his table.

Mr. Hastings therefore proposed field allowances for Sir Eyre Coote and his staff, amounting to the sum mentioned in the Charge ; but they were only to be received in the field. When the General returned to Calcutta the allowances were to cease. Mr. Francis and Mr. Wheeler opposed this arrangement, as contrary to the Directors' positive orders, which precluded them from exercising any discretion of their own. Mr. Hastings contended that it was absolutely impossible the orders could apply to the case before them ; that it was a violation of every military principle to restrict the commander in chief to half the emoluments granted to the second in command ; and the majority agreed to the allowance. The General left Calcutta to review the army in August 1779, when the payment of these allowances commenced. After his departure Mr. Hastings proposed, that as long as the General should remain in Oude, these extra allowances should be paid by the Nabob Vizier. This arrangement Mr. Francis opposed, on the ground assumed since in the Charge—That it was a breach of the treaty with the Nabob Vizier, who was only bound to pay by the terms of the treaty, two lacks and sixty thousand rupees a month for a brigade. To this remark Mr. Hastings very clearly replied, that, subsequent

quent to that treaty, a considerable body of troops in addition to the brigade were stationed in Oude on the Nabob's application, the pay and contingencies of which the Nabob defrayed; and the presence of the commander in chief being absolutely necessary in Oude, the question was, Whether it would be unreasonable to call upon the Nabob to defray the expence of the extra allowances? The majority concurred with Mr. Hastings, and the Nabob, with the utmost cheerfulness, consented to pay the allowances. He did not concur with the Managers in deeming that demand a flagrant breach of treaty.

I believe this is the whole evidence to the first branch of the Charge. It is next alledged, that the Directors ordered these extra allowances to be struck off by a letter dated the 18th of October 1780, that they were struck off accordingly, but that Mr. Hastings of his own private authority continued to Sir Eyre Coote certain large allowances, amounting to twenty-one thousand six hundred pounds a year, which were paid by the Nabob Vizier.

To the latter part of this Charge the Managers have no sort of evidence except the admission of Mr. Hastings himself. It appears by that evidence, that as soon as the order from the Directors for striking off these extra allowances arrived in Bengal, Mr. Hastings and his Council ordered all further payments to be discontinued. The situation of Sir Eyre Coote, when the Directors thought proper to shew so marked a disregard to his services, was critical indeed. Hyder Ally, with a conquering army, was in his front, and that circumstance alone prevented the General from immediately quitting India. The Directors were not pleased to take any notice of the extra allowances drawn under the appointment of the Board by General Stibbert, the provincial commander in chief of Bengal; and Sir Eyre Coote, the commander in chief of all their forces, on whose zeal and attachment their very existence then depended, was ordered to keep the field upon less than one half of the pay and allowances granted to General Stibbert. After serving two successful campaigns upon the Coast, Sir Eyre Coote took the opportunity of the rainy season to return for a few months to Bengal. He arrived in Calcutta in November 1782, and again embarked for Madras in March 1783, carrying with him a large supply of trea-

sure, a reinforcement of troops, and wishing most anxiously to retain life long enough to take Mr. Bussy a second time. That distinguished officer was taken by Sir Eyre Coote at the battle of Vandewash in 1760, and in the year 1783 he commanded three thousand French troops and a party of Tippoo's forces at Cuddalore. This was a point of such moment, my Lords, that every lesser consideration naturally gave way before it. In this critical situation of public affairs Mr. Croftes, who was the attorney of Sir Eyre Coote, wrote a letter to Mr. Bristow, of which the latter gentleman sent a copy to the Governor-General and Council, after the departure of Mr. Hastings. In that letter Croftes tells Bristow that some field allowances are due to Sir Eyre Coote from the Nabob Vizier, since August 1782; that the Governor had requested Croftes to write to Bristow to receive and remit the arrear, and to receive the payment in future, month by month, as it became due.

To evidence so introduced before the House of Commons, Mr. Hastings, much to his honour, I think, made no objection. I will read to your Lordships his Defence to this Charge of the Commons:

"By what authority Sir Eyre Coote continued to receive this allowance from the Nabob Vizier, I know not; but I have a faint recollection of Mr. Croftes having mentioned the circumstance to me, in the month of January 1783, and I have no doubt of his having received my authority to write to Mr. Bristow. Sir Eyre Coote was then on the point of returning to Madras, with a constitution worn out in the public service, by exertions almost beyond belief. His life was of the utmost importance: I had not a doubt of his success against Mr. Bussy, could he have arrived in tolerable health upon the Coast. This was not a time for me to dispute any point that could add to his chagrin. His expences were considerable—He had three separate establishments—one at Calcutta; one at Madras; and a third in the field. The allowance, as I understood, was voluntarily paid by the Vizier. I could have had no private interest of my own to gratify at any period of our connexion, more especially at a moment when the whole world knew that Sir Eyre Coote could not live the months having, when he returned to Madras,

"Madras, as he truly said, one foot in the grave, and the other at the edge of it."

Such is the account given by Mr. Hastings—the account which the Managers thought proper to read, and which they have not attempted to disprove in any one part of it. It is impossible, therefore, to impute Mr. Hastings's conduct to any other than public motives, and ~~and~~ for the welfare of his employers. Sir Eyre Coote, as your Lordships know, did not live to effect that important service which both himself and Mr. Hastings had so much at heart. He embarked in one of the Company's armed ships, and was chased by three French frigates from Balafore roads to Fort St. George: the ship was preserved by the superior skill of the English Captain. The anxiety of Sir Eyre Coote would not permit him to leave the deck, night or day, during the chase.—The struggle and agitation was too much for his weak and debilitated frame to survive. He preserved his recollection long enough after the ship came to anchor off Fort St. George, to express his warmest acknowledgments to the Captain, and to confer upon him a token of his gratitude. He then sunk senseless on the deck, was carried on shore in that situation, and died on the next day. Neither the nation, nor the East India Company were insensible to his merits and services. The two Houses of Parliament were unanimous in voting him their thanks for his exertions, and the Company have erected to his memory a monument in Westminster Abbey, and a statue at the India House. It rests with your Lordships to determine whether Mr. Hastings ought to be condemned for the share which he had in fixing an establishment for Sir Eyre Coote barely adequate to his necessary expences in the field.

I shall next proceed to consider the evidence which has been given by the Managers and the Defendant's Counsel on the Agency of Mr. Auriol. The Commons charge, that the Defendant, in further pursuance of the same prodigal and corrupt system of government, appointed James Peter Auriol, Esq. Agent of Supplies for the Presidency of Madras in December 1780, when there was a great scarcity of provisions at that settlement: that the Defendant gave him fifteen per cent. commission, though Auriol had only required the usual commission, which was five per cent. as the Defendant well

knew: that he also appointed Auriol agent for the supply of the other presidencies: that he scandalously and illegally declared this agency to be a reward for his long and laborious services as secretary: that his gain at fifteen per cent. being exorbitant, Mr. Hastings, on the 25th of March 1782, reduced it to five per cent. on all the expences of freight, &c. and fifteen per cent. on the purchases: that the provisions supplied were often bad, not agreeable to mufters, of short weight; and that Mr. Hastings discouraged all just inquiry into such complaints.

The evidence upon this agency is so exceedingly clear, and all that is important lies in so very narrow a compass, that I shall not take up much of your Lordships time in referring to it.

It appears that a very early consequence of Hyder's invasion of the Carnatic was, an extreme scarcity of grain at Madras, and a strong apprehension of famine, unless relieved by the exertions of the Bengal government. Considerable supplies of provisions were sent from Bengal in the months of October and November 1780. Sir Eyre Coote, who arrived at Madras early in November 1780, gave to Mr. Hastings a most gloomy picture of the state of the Carnatic, and frankly told him that Madras must depend upon him for men, money, and provisions.—The government of Fort St. George made similar representations, and they were further enforced by the most pressing private letters from the Governor of Madras, Mr. Smith, to Mr. Hastings.

It was in this state of affairs that Mr. Auriol the secretary proposed to contract for the supply of a very considerable quantity of grain and provisions, to be delivered on certain terms at Madras, or, as their wants were most urgent, to furnish every possible assistance, and to be indulged with the usual commission for his trouble. The latter proposal was accepted, and Mr. Auriol was appointed agent of supplies with a commission of fifteen per cent. The Managers assert that the usual commission of merchants was five per cent. and have fully proved it to be so: but the Defendant's Counsel have brought full proof, that where goods are furnished by individuals in the Company's service, the commission has been fifteen per cent; so that there can be no doubt, but that when Mr. Auriol proposed to take the usual commission, he meant that commission which every per-

son in the Company's service, when employed to purchase stores or provisions, did actually receive.

The supplies required by Fort St. George were to very considerable, that the commission of 15 per cent. though fixed agreeable to established practice, was reduced to 5 per cent. on all charges. The Court of Directors, in July 1782, expressed their disapprobation of this agency, and it was accordingly annulled. But it is absolutely impossible for any fair or candid man to read the evidence which has been given upon this Charge, without concurring entirely in the justice of the expressions said to have been uttered in another place.—"That Mr. Hastings had the merit of having saved a whole people from perishing by famine, and of doing it in the most economical way possible."—It appears by the letters on your Lordships Minutes, that Lord Macartney, after he had succeeded to the government of Fort St. George, expressed his sense of the exertions of the Bengal Government in the strongest terms. He attributed the preservation of the Carnatic to the zealous and judicious efforts and exertions of the Governor-General and Council.

On the 31st of October 1781, Lord Macartney, in a letter to the Court of Directors, says, "I am happy to do justice to the Governor-General and Council of Bengal, for their great exertions in supplying us with money and provisions; to those exertions I consider the preservation of this settlement to be in a great measure owing."

On a comparison between the expence of the rice furnished by contract, and of that which was supplied under the agency of Mr. Auriol, your Lordships will find that the latter was a cheaper and by far a better mode of supply; and indeed it seems now to be the universal opinion of Gentlemen in office in India, that it is infinitely more for the advantage of the public service, more especially in time of war, to confide in agents who are men of honour, than in contractors.

The Commons alledge, that the provisions furnished by Mr. Auriol were of a bad quality; but it is fully established by the evidence, that infinite

pains were taken to procure provisions of the best quality; that those who were attended with the commission succeeded, except in the instance where the applications from Madras were so exceedingly pressing that the agents bought up rice wherever it could be procured, and a small part of it being exposed to the rain, became damaged; and in another instance, a few bags of rice were stolen. These, I believe, are the only instances of failure, both of which were owing to accident, in the execution of this agency; from whence it would seem that Mr. Hastings could not have placed so important a trust in better hands.

The next and the closing allegation in this Article, is the Agency of Mr. Belli. Mr. Hastings is charged with granting this agency on very extravagant terms to his private secretary. The evidence sets this transaction also in so very clear a point of view, that I imagine I need not detain your Lordships with many observations upon it. Of the propriety of keeping up a proper supply of provisions in Fort William, no one, I think, will entertain a doubt. A reference was made by the Board to three merchants in Calcutta, in order to know what would be the rate of commission at which a certain quantity of provisions, of a perishable nature, could be kept in Fort William. These merchants reported, that the service could not be done for less than twenty per cent. By examining the accounts of a store-keeper it appeared, that on many of the articles furnished by him, there had been a loss of ninety per cent. and the Board ultimately fixed the allowance at thirty per cent. General Clavering strongly opposed the terms of this agency, and calculated that the profits would amount to thirty thousand pounds in three years. Mr. Hastings feeling the language of this dissent to be in some degree personal, after controverting General Clavering's calculations, declared, that the accounts of the agents should be open to the inspection of the Company, and that if the Directors thought the profits too great, he would be responsible for Mr. Belli's paying the surplus into the public treasury. Mr. Hastings added, that the proper supply of Fort William with every requisite for a siege, was a

* By Mr. PITT in opposing this Charge in the House of Commons in April 1787:

concern

concern for which, as Governor of that garden, he was especially responsible, and that he had confided the charge to a man who he knew would discharge the duty with fidelity and honour.

The Directors thought proper to add all the calculations of General Clavering; that is, they supposed that the profits of this agency would amount to thirty thousand pounds in three years; they direct, therefore, that the agency be reduced to twenty per cent. and that Mr. Hastings should pay, or cause to be paid, ten thousand pounds into the treasury. • Before this order reached Bengal, Mr. Belli, in the form of a contract, was bound to supply Fort William with provisions for five years from September 1779, on the terms of his agency. When the letter of the Directors was referred to Mr. Belli, he declared that it would be absolutely impossible for him to go on at twenty per cent. and he was convinced that the Directors would not desire him to pay ten thousand pounds, when they knew that his whole profits for three years, on a very troublesome and precarious agency, had not exceeded that sum: that the Directors, adopting General Clavering's calculations, concluded that he had made thirty thousand pounds in three years, of which they permitted him to retain twenty, and to pay the other ten into the public treasury; whereas, in truth, he had made but ten thousand pounds, only one half of the profit which the Company were willing to allow him.

This representation was transmitted to the Directors, and it is not unfair to suppose, that they conceived it to be perfectly satisfactory, from the circumstance of their total silence on that subject from the year 1780 to this day.

Part of the stores laid in by Mr. Belli were sold in December 1784. The price charged to the Company for those stores was two thousand six hundred and ninety pounds—they sold for four thousand five hundred and twenty pounds. The circumstance was noticed to the Company, and in the answer of the Directors, dated March 1787, they speak in very high terms of the assiduity and fidelity of Mr. Belli. This Gentleman came to England in 1785, and continued some years to be examined as a witness; but the Managers not chusing to call him, and Mr. Hastings unwilling to detain him

longer at a manifest inconvenience, he returned in the year 1793 to Bengal; he had remained beyond the period prescribed by law, and it was necessary that he should be re-appointed to the service by a vote of three fourths of the Directors, and three fourths of the Proprietors. He had the pleasure and satisfaction, however, of having been unanimously re-appointed by both those respectable bodies; and it certainly appears, both in the instance of this Gentleman and Mr. Auriol, that Mr. Hastings fixed upon men of fair and honourable characters to execute two very important agencies.

I have now gone through the whole of the Fourth Article, and shall proceed to put the questions on each allegation separately; I shall therefore first move, "That the Commons have made good the Charges alledged against Warren Hastings, Esq. contained in the Fourth Article, respecting the Opium Contract, the Smuggling the Opium to China, the Allowances to Sir Eyre Coote, the Bullock Contract, the Agencies of Mr. Auriol and Mr. Belli."

The Bishop of Rochester said, that he would trouble their Lordships with a few words upon the only one of the five allegations in this Article, on which the smallest degree of doubt existed in his mind; he meant the opium contract granted to Mr. Sullivan in 1781. The opium contract had been much relied on by the Managers, and certainly had been attended with circumstances of a questionable nature. In order to shew in what light he understood this part of the Fourth Article, his Lordship referred to the material parts of the evidence, beginning with the letter of the Directors to the Council, March 29, 1774, directing that all contracts should be publicly advertised, sealed proposals received, and the preference given to the lowest bidder, sufficient security for his faithful discharge of the conditions of his contract being at the same time taken. He next traced all the transactions in evidence, from granting it to Mr. Mackenzie in 1777, on a contract for three years, to the sale of it by Mr. Belli and Mr. Young in April 1781, including the censure conveyed by the Directors in their letter of December 23, 1778, on the Council, for having omitted to advertise for proposals previous to their contracting with Mr. Mackenzie for three years.

years. His Lordship fully concurred with Lord Thurlow in thinking it very extraordinary that the Charge omitted to notice the contract granted to Mr. Mackenzie in 1780. He referred to the minute of the Board in which Mr. Hastings recommended to the Council, that the opium contract be granted to Mr. Stephen Sullivan for four years, the resolution of the Council so to grant it, the reduction of the penalty on the opium contract, the abolition of the inspectors, and the sale of the contract by Sullivan to Mr. Benn for 350,000 sicca rupees before the execution of any part of the contract. He dilated upon the evidence of Mr. Benn and Mr. Young, and made a variety of observations upon each fact stated by them as he came to the mention of it, shewing what grounds of a justificatory nature had been established by the testimony of the witnesses to qualify those facts, and prove that they had neither originated from a corrupt motive nor a criminal intention on the part of Mr. Hastings. His Lordship said, there was certainly no proof that Mr. Hastings knew anything of the transactions between Sullivan, Benn, and Young; at the same time it was clear that if the contract had been publicly advertised, and there had been others to bid low, Young would have taken it from the Company at the price which he gave Benn for it, and in that event the Company would have gained the fourteen thousand nine hundred pounds a year, for five years, which was divided between Benn and Sullivan; but he was at a loss how to treat the ignorance of the whole Board on this subject of opium, after they had taken every pains to get information, as a crime exclusively in Mr. Hastings, and as a crime meriting impeachment; it might be the ground of a civil action from the Company, if they had thought proper totally to forget the many important services of Mr. Hastings, and to forget also that they were indebted to him alone for this valuable branch of revenue. He did not believe that any Member of the Board conceived that the Directors orders relative to contracts, applied to this branch of the public revenue. The Company, however, entertained very different and more grateful sentiments towards Mr. Hastings: the Proprietors had repeatedly returned him their thanks; and on his final resignation of the service,

and after his arrival in England, the Court of Directors unanimously returned him their thanks for his long, faithful, and important services. His Lordship therefore contended, that until he was better informed, he should continue to believe that there was really no crime charged which could be properly cognizable by Impeachment, and that it was a matter between Mr. Hastings and the East India Company.

The Earl of Caernarvon was induced by what had fallen from the Learned Prelate to detain their Lordships for a single minute, and it should be but for a minute. He said, that by the Act of the 13th of the present King, the Governor-General and Council were to obey all orders issued by the Directors; that therefore the not advertising and putting a contract to public auction, was a breach of their standing orders. The Noble Earl added, that it was highly necessary to reprobate every improper expenditure of the public money; and then read an extract from a letter written by Mr. Hastings to the Directors, in which he tells them that the service is loaded with gentlemen of high connexions in England, who expect to acquire rapid fortunes, and are sent out to India with that view solely.

After several strong animadversions on the granting the opium contract for four years to Mr. Sullivan, who neither possessed, nor pretended to possess, any knowledge respecting the subject of his contract, nor any skill in the business, and who immediately sold it at a considerable profit to Mr. Benn, his Lordship proceeded to notice the next part of the Charge respecting opium, namely, the Governor-General's having dishonoured the British Government in India, and disgraced its credit, by lending his countenance to the smuggling trade which he suffered to be carried on in the article of opium to China—when he at the same time well knew that the importation of opium was forbidden, under severe penalties, by the Chinese government; that the article itself is liable to be burnt, if seized, and the vessel that imports it to be confiscated, and the Chinese in whose custody it may be found for sale to be punished with death. The Earl made some pointed remarks on the whole of the Governor-General's conduct in this particular, and reprobated it severely. In order to illustrate

justify and support his argument respecting it, he read a letter from the Supra-cargoes at China and Canton, in which they say, that if the Captain had obeyed his orders, the opium might have been sold to great advantage, but they were afraid that public interests had been sacrificed to private advantage.

The Bishop of Rochester, in reply, said that he did not expect the Noble Earl would have drawn an argument from the letter of the Supra-cargoes at Canton to criminate Mr. Hastings for giving the opium contract to Mr. Sullivan: it surely was *ex parte* evidence. The Supra-cargoes censured the Captain of the ship freighted with opium to China, and attributed it to him, or to others, that it did not turn out a much more beneficial adventure: the Captain as loudly censured the Supra-cargoes; and Colonel Watson said, that though the business was new and very much mismanaged, it still was a very profitable concern for the Company.

The Earl of Mansfield said, he had been lately too much employed to look minutely into the evidence on the different contracts, and therefore should forbear to deliver his sentiments at the present moment; but he desired to be understood rather as having suspended his opinion, than as not having formed one upon the subject. There was one point, however, on which he could not conscientiously withhold them—a point on which his opinion had never varied from the first moment that it was mentioned—he meant the extra-allowances granted to Sir Eyre Coote; and upon that Charge he was desirous and anxious to communicate his sentiments to their Lordships. The Earl declared, that in granting those allowances, he not only conceived the conduct of Mr. Hastings to be highly justifiable, but strictly meritorious.

The Lord Chancellor said, he wished only to observe, that in every instance but the Bullock Contract—and there he thought the terms too high—the evidence clearly proved, that the Defendant had acted profusely and improvidently, as well as contrary to the express orders of the Directors; and therefore he was of opinion that the Commons had made good the Charge.

The motions were then severally put, and the *Not-Content's* had it.

It was next moved, "That the Commons had made good the remainder of the Impeachment against Warren Hastings, Esq." which was also *negatived*; and the Resolutions having been read over *pro forma* were ordered to be reported on.

WEDNESDAY, APRIL 1;

when Lord Walsingham, as Chairman of the Committee, brought up the Report, and the Resolutions were read over.

Lord Thurlow then moved, and it was ordered, "That the said Report be taken into consideration on Monday se'nnight."

MONDAY, APRIL 13.

Lord Walsingham presented the Report, which having been read a first time,

Lord Walsingham said, that not having had any opportunity, as Chairman of the Committee, of delivering his opinion upon the subject of the Resolutions, and as he had no wish to conceal what that opinion was, he would take the liberty of stating it as shortly as he could. The principle upon which he meant to act was this: To acquit Mr. Hastings whenever he appeared to have acted clearly for the public service, or wherever any doubt arose so far in point of law, as that the most learned authorities in the House differed in their construction of the law upon the subject.

Upon this principle he was bound to acquit Mr. Hastings on the Benares and Begum Charges, because his only object was the Company's advantage, without any view of self-interest in the case. His Lordship said, it could be proved from the written, and still more from the parole testimony of almost every witness, that they were all convinced at the time, and even now continued in the belief, that the conduct of the Begums was disaffected towards the East India Company during the rebellion of Cheyt Sing. In 1781, Mr. Hastings risked himself and his own reputation for the good of the service alone. Had he remained quietly at Calcutta, he might have saved himself from the possibility of blame, but the Viceroy would have had no claim to any of those benefits to which he was entitled by the Treaty of Chunar, nor

would the Company ever have recovered that debt from the Vizier which it was so material for them to receive at that time.

Upon the same principle he was bound to acquit him upon the Present given through Sadanund, because he took it with a view to forward an expedition which he thought essential, and which the Council objected to because of the expense.

As to the Present to the Raja of Berar, he thought it impossible to pronounce him guilty of that Charge, because the Commons had (probably from mistake) charged him to have given it in the autumn of the year 1730, whereas the money that he gave for that purpose and at that time, was the Dinagepore money, which was not in charge at all; and the Patna money, which was in charge, was not given till March 1731, and therefore the Charge was certainly, literally speaking, not made out—but even if it had been proved as the Commons intended, it would certainly have fallen, as would that from Sadanund, within the Act of 1773, having been carried to the Company's account.

He said, the Present from Nundool was not made out, in point of evidence, so as to warrant him to pronounce it to be a high crime and misdemeanor.

The Present from the Vizier, and that from Nobkissen, stood indeed in a very different light; and although they were not illegally taken, yet he should have thought them improperly taken, even if they had been taken for the sole use of the Company—but still more so, if they were taken (as they appeared to be) with a view to Mr. Hastings's own benefit. That which was taken from Nobkissen was not to be justified as with respect to Nobkissen; but that was not the charge. The Present from the Vizier was not to be justified, because he was at that time in so much distress, that his own troops were upon the point of mutinying for want of pay, and he had not credit enough to borrow one hundred thousand pounds, which he wanted six weeks afterwards for the purpose of paying off certain establishments which were to be abolished by the treaty of Chunar, without making use of Middleton's assistance to enable him to complete the loan: at the same time his whole revenue, which, by Middleton's account, was not fifteen hundred thousand

PART VII.

pounds a year net money, was made over in assignment to the Company for the debt which the Nabob owed them, amounting to about five hundred thousand pounds, and for the current claims which the Company had upon him for the year 1731; which amounted to above seven hundred thousand pounds more, exclusive of all the Nabob's arrears to his own civil and military establishments. And therefore, as a part of Mr. Hastings's professed object in his delegation to Oude was to relieve the distresses of the Vizier, his Lordship would certainly have pronounced him guilty of a high crime and misdemeanor in thus having added to them, if it had not been for the arguments of a Noble and Learned Lord.

He next went into a discussion of those arguments. He said, if he understood them rightly, Mr. Hastings could neither be voted guilty by the common nor by the statute law for having received them. As to the statute law, the Act of 1773 was complied with, by his having carried the one, and offered the other, to the use of the Company. If the Company had sent him no answer for above ten years, and had neither accepted it themselves nor ordered him to restore it, it was the Company's fault, nor could the Act of 1734 attach upon a crime committed previous to the passing of that Act.

It was said, he could not be convicted by the common law, because the Charge must state that the Present was illegally and corruptly taken; which, in the case of the Vizier, was not so stated. It was said, it must also state the reward or brokerage, or consideration for which it was taken; which was not so stated, either in the case of the Vizier or of Nobkissen; nor did the Charge mention anything of its being a crime either of extortion or oppression.

At the same time, his Lordship said, he was free to confess that the arguments of the Noble and Learned Lord upon the woolack made a very considerable impression upon his mind; but where two such learned authorities differed, the safest way for a Judge was to take the mildest side, and to lean in favour of the Defendant, who from his character and situation was certainly entitled to all the favour that the House could shew him, wherever that favour could be shewn with justice.

As to the Contracts, he sincerely
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wished he could acquit him upon all of them; but it appeared to him, that with respect to the Opium Contract he had disobeyed the orders of the Company repeatedly, for the purpose only of benefiting Mr. Sullivan, whom he must have known he was about to benefit at the Company's expence.

Mr. Sullivan was a young man at that time just come out to India, and already appointed Judge Advocate, and had also a situation in Mr. Hastings's family; so that he could understand very little of the culture of opium, nor could he reside upon the spot, which it appears the contractors should do, for the benefit and security of the ryots. He was the son of Mr. Sullivan, who was at that time Chairman of the India House, and was Mr. Hastings's friend and protector, when he stood in need of all the protection he could obtain, from the numerous enemies with which he was surrounded; but that will not justify Mr. Hastings for sacrificing the interest of his employers in a moment of so much distress, to make the fortune of Mr. Sullivan.

At the same time let it be stated, that all the revenue which the Company have at any time derived, and are now deriving, from the article of opium, is entirely owing to Mr. Hastings, who rescued it from the hands of the Patna Council, to whom it was a perquisite; and that revenue from the year 1772, when it was transferred to the Company, cannot have amounted to less than two millions sterling up to this time.

But if the contract had been advertised, as the Directors had ordered, it would have produced to the Company at least ten thousand a year more than it did produce during the four years for which Sullivan held it: it did produce a great deal more during the subsequent four years for which Sir John Macpherson advertised it; it produced more still during the next four years for which Lord Cornwallis advertised it: and yet in those contracts a clause was inserted, giving to the Company the power to revoke the contract if they thought fit, which clause did not intimidate the contractors from bidding, as it was supposed it might and ought to have been inserted in Sullivan's contract.

Upon Auriol's Agency for rice, he owned he had for a long time had great doubts why fifteen per cent. was

given, when Mr. Brodie proved that five per cent. was the usual commission to merchants, and when Auriol was very glad to take it when offered to be reduced to five per cent.; but in answer to this, Barwell proves that fifteen per cent. was the constant commission given for every article of supply by the Government. This assertion, though not applied to this particular case, is however proved by various points of evidence which directly support it; above all, it is proved that Ferguson, in August 1780, took the contract at six rupees and eight annas the maund; Auriol, in December 1782, offered to take it at the same price, when Mr. Hastings proposed to him to take it upon a commission of fifteen per cent.; and he called upon the House to observe, that Brodie wrote word in September 1781, that all the rice which was sold, was not only in general of a better quality, but cost above twenty per cent. less than that which was supplied by contract. If it is said, that this only proved that the contract with Ferguson was too high, it is to be observed, when the same article was advertised in 1783, the lowest terms offered were within four annas of what Ferguson had received.

As to influence, he did not see with what view of influence this Agency could be given. The Charge indeed stated, that it was given to Mr. Auriol by way of reward for his services; but the moment the terms were agreed upon, Auriol left Calcutta for the benefit of his health, and the commission was executed by his brother till the month of September following.

As to Sir Eyre Coote's Allowances, he agreed entirely with the Noble Earl (Lord Mansfield), that Mr. Hastings did perfectly right not to take them off, under the peculiar circumstances of this case; for it should be remembered, that Mr. Croftes's letter to Mr. Bristow to pay them was written at a time when Sir Eyre Coote's very name was a victory, and when it was of the utmost consequence to the Company's affairs that Sir Eyre should resume the command of the Army in the Carnatic, which in point of justice to his family he possibly might have refused to do, in the dangerous state of health in which he then was, as the expence which that command would require is known to be considerable.

siderable. His Lordship therefore said, had he been in Mr. Hastings's situation he would have done exactly the same thing.

So he would with respect to the Bullock Contract proposed by Sir Eyre Coote, who complained, as did the provincial commander in chief, General Stibbert, that the former contract was made upon such low terms that the army suffered essentially by it; and it would have been a very invidious task, and Mr. Hastings would have had much to answer for, had he taken upon himself to reject a motion so made by the commander in chief, in whose department it immediately was, and who was himself to see to the execution of it in time of actual service. Nor were the profits enormous, as the Charge stated; for Ferguson's letter, supported by the declaration of his book-keeper Farlie, proved that his profits were not fifteen per cent. subject to bad debts to the amount of a lack of rupees; which is no very enormous compensation, when it is considered how great the responsibility is of such an undertaking, upon which the very existence of the army must depend, and also how great the risk is; for, if the Marattas had entered the provinces, as was expected, Ferguson must have been utterly ruined.

Nor did he see anything to object to in the Contract with Belli. The supply of the garrison with provision, &c. was held to be material when it was proposed in 1778, in which opinion even Mr. Francis himself concurred. That it was well executed, appears by the provisions having sold for above thirty per cent. more than they cost Government. That the merchants were wrong in supposing twenty per cent. would be a sufficient agency, is proved by Johnson's account of the actual profit and loss, which upon some articles was ninety per cent. His profits, he declares upon his honour, were but ten per cent. which did not amount upon the average to three thousand a year. Though the Directors intended to reduce his contract to twenty per cent. that is as much again as he actually received.—Mr. Belli's character is spoken of in the highest terms by Sir Eyre Coote; and afterwards by Sir John Macpherson, and by Mr. Stables, when Mr. B. left India.

Having thus touched upon the principal points of the Resolutions of the Committee, his Lordship said, he felt the good sense of an observation that had

been made by a Learned Lord, [Lord Loughborough] that the House was trying the case, and not the man, and therefore he would forbear to travel at large into the wide field which presented itself before them, of Mr. Hastings's general merit and services; but, as much he thought he might be at liberty to say, that in a situation the most important, and under circumstances the most trying and the most mortifying in which any public man ever stood, he had, by his exertions and by the strength and vigour of his mind, preserved an empire to the nation, which without those exertions might have been lost to it for ever.

Lord Thurlow moved, "That the Resolutions contained in the Report be read one by one, and a question put upon each."

The first Resolution being read, the Lord Chancellor said, it appeared to him, that the only question which could be put in that stage of the business was, "That the Report do lie on the table." He observed, that the Report could not possibly be made the ground of any essential future proceeding; if however any Noble Lord had it in his contemplation to follow it up with any future proceeding, it ought to be stated to the House what was to be the object of that proposed future proceeding, that their Lordships might see their way, and know to what measures they were to be induced. For his own part, he saw no possible use that could be drawn from putting a vote upon each Resolution contained in the Report. If by a Resolution of the House the Report was agreed to *in toto*, no practical end would be answered. A Resolution of the Committee would not conclude any Noble Lord as to his ulterior vote in Westminster-Hall, nor indeed would a Resolution of the House so conclude him. Not having changed his own opinion since he had been in the Committee, he should certainly be inclined to find the Defendant guilty on most of the Charges; and no proceeding that their Lordships could institute, would persuade him to depart from the line of conduct which he had laid down for himself as to his ulterior vote on each Charge in Westminster-Hall. If the coming to a Resolution upon the Report, would at all tend to accelerate the progress of the cause, or aid the due administration of justice, he should have no objection; but considering that no further proceeding had been intimated, or, as far as the House was apprised, was likely to be

grounded on agreeing to it, he really was at a loss to imagine what other question could be put than, "That the Report do lie on the table." He hoped therefore that the Noble and Learned Lord would forego his motion, and consent that the Report be laid on the table.

Lord Thurlow declared himself to be rather astonished at the sort of objection that had been raised by the Noble and Learned Lord to a question which might almost be stated to be a question of form. He feared however, if the Learned Lord's reasoning had been right in every part of it, their Lordships had gone somewhat too far to fall in with it without a violation of order, and something like a gross irregularity in the nature of their proceedings. The Resolutions contained in the Report had been read once, and the first of them had been distinctly read a second time, which amounted to the same thing as if the question had been put upon it. The form of proceeding which he had moved, and in which the House had already engaged, viz. reading the Resolutions one by one, and putting a question upon each, was neither more nor less than the ordinary course of proceeding in all similar cases. When a Report was brought from a Committee, either on a bill, a petition, or any other matter submitted to the investigation of a Committee, and upon which matter of reference they came to more than one Resolution, it was the uniform practice of either House of Parliament to dispose of the Report in some mode or other, either to recommend it, to negative some of the Resolutions, and to agree with others, or to resolve their concurrence with the whole of the Report. Undoubtedly, if the Resolutions were all agreed to, it would not, as the Learned Lord had observed, conclude any individual Peer as to his ulterior vote in Westminster-Hall. He was perfectly aware that it did not, any more than agreeing to the Report of a Committee to whom a petition had been referred, on which the Chairman of that Committee was directed to ask leave to bring in a bill on the subject matter of that petition, conclude any one Member as to his giving his free opinion and vote in the discussion of the principle and clauses of such bill, when it should come before either House of Parliament. Every Member well knew that each stage of the bill

was open to debate and opposition, and that their opinions, and the mode of stating them, were not in the smallest degree fettered or embarrassed by their having agreed to the Report, which went no farther than to indicate the sort of bill to be brought in. They were nevertheless free to object to the principle, to any of the clauses, and in short to every part of the bill that they chose to resist. The Learned Lord's motion did what perhaps he was not himself aware of—it went to counteract the original purpose for which their Lordships had gone into a Committee. He thought it had then been understood, that it would be more convenient for deliberation to discuss the evidence adduced on the part of the Prosecution and Defence in the form of a Committee than in a House, and consequently he had no idea that any Noble Lord would object to dispose of the Report in the usual manner that all Reports from Committees were disposed of; and in the present instance it was more especially proper, as the fullest discussion of every part of the Impeachment was desirable, and no mode of proceeding could admit of more opportunity of free discussion, than the mode of reading the Resolutions one by one, and putting a distinct question upon each.

The Earl of Caernarvon could not agree with the Learned Lord [Lord Thurlow], but thought directly the contrary. He spoke from the Learned Lord's own words, if he understood them rightly, that the form of going into a Committee was adopted for the sake of the more free and ample discussion of the evidence. Why then should the Learned Lord wish to commit the House, by calling upon them to agree to the Resolutions come to by the Committee, and thus embarrass their ultimate vote in Westminster-Hall? What end would it answer, or what service would it do to the cause? It would merely secure the entry of their Lordships' concurrence, if they should concur with the Resolutions of the Committee, upon their Journals, which would necessarily throw a difficulty in the way of their ulterior decision, and embarrass all their future proceedings. Possibly some Noble Lords might think it necessary to call for the opinion of the Judges on particular points of evidence which appeared to be matters of law, and perhaps he might himself wish to have their opinion on one or two points.

points. The House, pending the trial in Westminster-Hall, had frequently thought it necessary to consult the Judges upon parts of the proceeding which depended upon legal construction, but they had never once been called upon or consulted by the Committee, where their advice seemed to be the more necessary, as the case was reduced within a narrower compass than before, and the whole ground of discussion was confined to the evidence. His Lordship further said, that the judgment to be delivered in Westminster Hall was a matter of conscientious opinion, and therefore he conceived that no other question than that stated by the Learned Lord on the woolpack [Lord Loughborough,] viz. "That the Report lie upon the table," could or ought to be put.

Lord Thurlow, in reply, said, the question suggested by the Learned Lord on the woolpack was directly in the teeth of Parliamentary usage and precedent; whereas the mode of proceeding he had proposed, and which the House had in fact adopted, was consonant to the uniform practice of Parliament. Whichever of the two modes was adopted, was a matter of perfect indifference in itself; but it would be fatal, were their Lordships rashly to form a precedent altogether new, and directly in defiance of the wisdom and experience of their ancestors, who had settled a mode of proceeding so immediately the reverse of that contended for. The proceeding in Sacheverell's case was stated in the Report of the Committee appointed to search for precedents, and there their Lordships would see, that although there were differences of opinion respecting parts of the Impeachment, the House came to a vote upon each Article before they delivered their verdict in Westminster-Hall: He therefore saw no reason why they should not in this instance do the same, especially as it really concluded nothing that could affect the judgment which each individual Peer should think it his conscientious duty to pronounce in Westminster-Hall.

The Earl of Lauderdale said, he had not attended the Committee, neither did he mean to take any part in the progress of the cause for obvious reasons; but the present subject of debate he considered entirely to be a question of form, respecting which he was at liberty to deliver his opinion, without in

the smallest degree interfering with the Impeachment or the Trial. He could not help thinking that the mode of proceeding contended for by the Learned Lord [Thurlow], viz. to read the Resolutions *singulatim*, and come to a distinct vote upon each, would be to be guilty of the height of ridicule and absurdity. It involved this strange dilemma, and possible injustice to the Defendant; their Lordships might acquit him of all the Charges in the Chamber of Parliament, and find him guilty as a Court of Justice in Westminster-Hall. Whatever vote they came to respecting the Trial in the House would of course be entered on their Journals; and if a verdict of a different sort should be pronounced by their Lordships judicially, the Defendant would have just cause to complain of the contradiction and inconsistency of their proceedings. On the other hand, how much more unjust would it be if the House should dissent from the Resolutions contained in the Report of the Committee, and their Lordships should nevertheless individually acquit Mr. Hastings in Westminster Hall? He would in that case have cause to complain of being sent down to judgment under prejudice, and of standing criminated on their Lordships Journals, although he had been acquitted and pronounced innocent by the highest court in the kingdom, and the only court competent to decide upon his guilt or innocence in respect to the various matters charged against him. In fact, the sole aim seemed to be to obtain the vote of the House in concurrence with the Report for the sake of entering it on the Journals, and he saw not what useful purpose that was to answer. With regard to what the Learned Lord had said of the usual course of proceeding with the Reports of Committees on petitions or bills, the present case was not to be compared with the Report of a Committee on a bill, or the appeal of any individual even in an ordinary judicial cause. It was perfectly new in itself, altogether unprecedented, and of the highest importance, as it involved the national character on points the most tender, delicate and sacred. He had as much reverence for precedents established by the wisdom of their ancestors, and founded in good sense, as any Noble Lord could entertain; but he was neither ashamed nor afraid to say that, where a precedent, of however long standing, was pregnant with

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the utmost ridicule and absurdity, he thought it high time to make a new and form a precedent established on less questionable grounds, and on grounds more reconcilable to common sense. The Learned Lord had cited the proceedings of the House in the case of Dr. Sacheverell, but he saw no reason for implicitly adopting the same line of conduct; it might be proper in that case, and altogether improper in the present. His Lordship added a few more observations, and declared he should give his vote for the question which the Learned Lord on the woolstack [Lord Loughborough] had suggested.

Lord Thurlow said, he wished that those Noble Lords who were such eager advocates for reform on all occasions, when they stated their sentiments in application to matters of judicial proceeding, would not direct their ideas to burying in their own ruins all the ancient establishments and approved forms and principles of administering justice, without at the same time taking care to be ready to suggest and build up something better, more conducive to the ends of justice, and more likely to promote the grand object in all matters of judicial proceeding. The mode he had moved, and which in fact the House had adopted, of reading the Resolutions contained in the Report a second time *in unaltered*, was the mode most consonant to the invariable practice of Parliament for centuries, and it best admitted of full and free discussion in the House of each Charge to which the Resolutions of the Committee respectfully referred. With regard to its having any tendency to commit their Lordships in any subsequent stage of the business, it certainly had not the smallest effect of that kind, and he begged their Lordships to recollect that they had already gone too far to allow them to adopt the motion of the Learned Lord on the woolstack.

The Earl of Lauderdale said in reply, that he looked with as much reverence to the precedents established by their ancestors as any man. When he was satisfied they were founded in wisdom and good sense; but he was not complaisant enough to adopt their absurdities, and support such as were open to ridicule. It had served the Learned Lord's purpose better to dwell upon that part of his speech which implied a wish to introduce a new practice, and

might admit of the use of the word *reform*, than to answer the arguments he had urged. In order, therefore, that what he had stated might not be lost sight of, he would remind their Lordships of the injustice the Defendants might possibly have to complain of, by unnecessarily entering upon their Journal, what the result of their opinions upon the Report of their Committee was, which might eventually be contradicted by the verdict given in Westminster-Hall.

The Earl of Caernarvon said, that the precedents on ordinary proceedings on Reports of Committees to the House, could have no analogy with the present case. We have hitherto adopted a mode of proceeding liable to great objection, and the absurdity increases every step. The House has referred to the Committee the discussion of a subject in which the consciences of the Committee alone are concerned, and they are now inclined to treat the case as one where they had referred to the Committee a subject for their examination and investigation, in order to collect matter to enable the House to act upon. In ordinary cases, the Committee take the labour of inquiry; they have power to arrange, digest and report materials; but they have no power or authority to act; their proceedings are ineffectual without the sanction or authority of the House. In the present case the House has no authority; its approbation and concurrence can have no more effect than its disapprobation and disagreement on the opinion of the Committee. The Lords who attended Westminster-Hall as judges of Mr. Hastings, have discussed the subject in a Committee in obedience to the orders of the House; they have reported their proceedings and opinion; if the House should disagree with them in opinion (and a question put to concur with the Committee implies the possibility of disagreeing)—the Committee will certainly consider that opinion as nugatory as the disapprobation of any other large body of men would be, which neither could nor ought to influence judges in the exercise of their duty, and the discharge of their consciences. They will go into Westminster Hall, and pronounce a judgment which will be an official and legal discharge or condemnation of Mr. Hastings; however it may differ from the opinion of the House, composed of Peers who

who have not attended the Trial: it would therefore be more becoming the dignity of this House to let the Report lie on the table, without making any order on it, because none can be made that is consistent with common sense. It is certainly true, that the objection would have been as valid to going into a Committee; but the discussion was thought by many of use: it cannot be of use to push it to an absurdity out of respect to form, especially when an attachment to form will lead us to a possible injustice as well as absurdity. If the House should be of opinion that the Committee are mistaken, and that Mr. Hastings is guilty; the Committee being composed of those Peers who have attended Westminster-Hall, and are the judges in this trial, will nevertheless prevail in acquitting him, and the House, who are not his judges, will have ineffectually and extrajudicially slandered his reputation, and delivered down to posterity a libel upon the Defendant, and a censure upon his judges. I do not know what the precedents are, but I know that the present trial, from its extraordinary length, differs so materially from every other on the records of Parliament, that no precedent can apply. The objection might not have occurred in short trials, where all the Peers attended the whole trial, and the same persons decided all questions on that trial, whether in Westminster-Hall as judges, or in the Committee and in the House as Peers; the place and form, not the substance, was changed; no difference of opinion on the same points was to be apprehended: but in a trial of so many years, where variety of changes by death or creation have taken place, and many from illness and fatigue have not attended the conclusion who attended the commencement of the trial; and at length the judges are reduced to less than thirty—in such a case the judges bear no proportion to the House of Peers who are to vote upon the Report of the Committee, and who may, without inconsistency, differ with the judges, though they cannot influence their conscience or their conduct. If the forms of the House do not admit the proposition, “that the Report do lie upon the table,” the previous question must enable the House to get rid of a question not fit to be put. I shall therefore move the previous question.

The Lord Chancellor a second time

left the woolstack to maintain his former argument, and to assert that any further or different line of proceeding would be perfectly inept and nugatory. The Learned Lord [Lord Thurlow] could not be ignorant, that when a question upon a point of law had been solemnly argued at the bar, previous to the Judges of the Court delivering their opinion *singulatum* from the bench, it was usual to hold a consultation, when the grounds of the argument on both sides were discussed; objections, as they rose in the mind of each Judge, were started, considered by the other Judges, and answered, as far as reply suggested itself; and after due consideration of the whole matter, the Judges proceeded to deliver their opinions in Court: but it was no unusual matter for each Judge to adhere to his original opinion, and to state it, with the reasons for it, from the bench. In like manner his Lordship considered that stage of the business. The House was holding a consultation with respect to their subsequent mode of proceeding, and the more free and unfettered it was, the better in his judgment. The Committee had certainly afforded scope for much valuable discussion; it had been the means of throwing a considerable degree of light on the evidence, and had certainly removed a great deal of difficulty in regard to the formation of an ultimate judgment on the cause; but to what purpose pass a vote on the Report, when it was agreed on all hands that it would conclude nothing?

Lord Thurlow once more rose and said, he had heard nothing that weighed in his mind sufficiently to justify a departure from precedent and long established custom. The Learned Lord had aptly enough compared their present situation to that of the Judges of any Court in Westminster-Hall holding a consultation after a solemn argument at bar, previous to their delivering their opinions *singulatum* in Court. How did their Lordships disposing of the Report one way or another apply as an objection? Whether they agreed to the Report, or negatived any part of it, they were as free to hold a consultation upon their respective opinions as ever. His Lordship having adverted to the *Earl of Middlesex's Case*, stated in the former Report of a Committee of their Lordships, mentioned what had been the proceedings of the House previous

to the giving judgment in Westminster-Hall. He added further reasoning, but readily adhered to his first argument, declaring that if any question was put in that stage of the proceeding other than to agree to the Resolution that had been read, it could only be the previous question.

On the question being put by the Lord Chancellor on the previous question, viz. "That this question be now put," the numbers were,

Contents - - - 6

Not-Contents - - - 14

The remaining Resolutions were then, by consent, read short and agreed to.

FRIDAY, APRIL 17.

Lord Thurlow said, the next point to be adjusted was, the mode and form of the questions to be put to their Lordships individually, when they gave judgment in Westminster Hall. From the moment that their Lordships had taken the subject into their consideration, after the case had been closed on both sides in the Court below, it had been settled that the Articles should be discussed separately, not only Article by Article, but Charge by Charge, as many as were found to be contained in each Article. His Lordship said, that he had suggested this mode of discussion, in the first instance, in order to remove obvious difficulty and avoid embarrassment, which must have been the case, where any difference of opinion was likely to be entertained; and in order to leave each Noble Lord perfectly free and unfettered as to the operation of his judgment upon every one distinct criminal Charge. As far as the nature of the case should be found to require it, his own opinion was, that the same line of conduct ought to be pursued with regard to the questions to be put in Westminster-Hall; where there were several distinct Charges contained in one Article, it would, he conceived, be proper to put several distinct questions. He owned, however, he had been a good deal struck with the opinion stated by the Noble and Learned Lord, when discussing the First Article, viz. that although it consisted of several facts averred to be matters of distinct criminal Charge, yet that all of them collectively, amounted only to one material Charge of High Crime and Misdemeanor; and that, had the Article been properly

drawn, the arrest would perhaps have been the only, or at least the principal Charge averred in the First Article. It was indisputably true, that they were but so many constituent parts of one whole, and were so far relatively connected, that though separately averred, they might all, without embarrassment or difficulty, be comprehended in one question to this effect, "Is the Defendant, Warren Hastings, guilty of the Charges of High Crime and Misdemeanor contained in the First Article of the Impeachment?" His Lordship said, he wished to hear the sentiments of other Noble Lords, before he moved it as a question to be put.

Lord Radnor said, he had some difficulty in regard to the First Article. It consisted of various Charges, with respect to some of which he might think Mr. Hastings criminal, and with respect to others he might deem him innocent. He thought it might be considered as divisible under five distinct heads of Charge, in which case every Noble Lord, who entertained a different opinion upon the different Charges, might satisfy his conscience and his judgment, by answering as he was convinced to the question that should be put upon each. He did not, however, mean to offer any resistance to the motion; he wished, nevertheless, to hear the opinions of other Noble Lords on the subject, with respect to the law and justice of the case, and in respect to the mode of delivering judgment.

The Lord Chancellor said, that, as the Noble and Learned Lord had already stated, the Article certainly did contain several Charges separately averred, but most of them were not substantive Charges, only matters of aggravation, and tending to lead to, and substantiate the material facts that were, in the consideration of law and justice, the high crimes and misdemeanors to be decided upon. He thought therefore the whole Article might be comprehended under the single question of— "Is the Defendant guilty, or not guilty, of the High Crimes and Misdemeanors charged in the First Article?"

Lord Thurlow said, the opinion of the Noble Earl was certainly of weight, and entitled to great respect. If it was generally the wish of their Lordships to subdivide the Article, and put five distinct questions, he had no objection; but he really saw no occasion for it, as

the fine, the arrest, and the deposition of Cheyt Sing constituted the essential Charge, and the other facts averred as matters of criminal charge, were either to be deemed matters of aggravation or inducements to the material Charge. His Lordship having further explained the grounds of argument which had induced him to entertain the opinion he had before stated to their Lordships respecting the Benares Article, moved the question in form, as he had first proposed it; which having been *unanimously* agreed to.

Lord Thurlow moved, "That each Peer give his answer to the question by laying his right hand on his breast, and saying, *Guilty or Not Guilty*, upon my honour."—Ordered.

Lord Thurlow next observed, that the Article concerning the treatment of the Begums certainly consisted of two parts: the violation of the Company's guarantee was one, and the resumption of the jaghires, and seizing of the treasures in possession of the Begum, the other; but as one led to the other, and both were connected, he thought both might be comprehended under one question, and should move accordingly, unless some Noble Lord should object to it. No objection being offered, the question was so put and agreed to.

The next Article, being the Sixth, containing the several Charges respecting the Presents, being read;

The Earl of Mansfield rose and said, he thought that the Charges contained in that Article stood on such different grounds from each other, and were so distinct in their nature, that they could not be comprehended under one general question of *Guilty or Not Guilty*; because, if that was the case, how could those who thought the Defendant guilty of any one Charge of taking a Present, acquit him upon the whole Article? Or, on the other hand, how could those who thought him innocent of some, but guilty of others, condemn him upon the whole? Until he was better advised, he should think the several distinct Charges required as many distinct questions to be put respecting them.

* As the *only variation* made by their Lordships from the Questions thus agreed to and ordered to be printed from those that were afterwards put by the Lord Chancellor will be found in the next Day's proceedings, it is thought unnecessary to insert them in this place.

† The *Sixteenth Question* was printed as follows:

"Is Warren Hastings, Esq. guilty, or not guilty, of the residue of the High Crimes and Misdemeanors, or any of them, charged upon him by the Impeachment of the Commons?"

PART VIII.

Lord Walsingham said, he felt exactly in the same manner respecting the Article relative to the Contracts; in some instances he might think Mr. Hastings criminal; in others not so; and therefore he felt the necessity of putting distinct Questions on each head of Charge contained in the Fourth Article.

Lord Thurlow said, it was enough to incline him to agree to put separate Questions, to hear that any one Lord desired or felt it proper to meet the respective Charges contained in the two Articles of Presents and Contracts; with distinct and separate Questions.

Distinct Questions were accordingly agreed to be put and taken *singulatim* on the Six Charges contained in the Sixth Article.

Seven distinct Questions were ordered, in like manner, to be put *singulatim* on the Fourth Article.

It was then moved, and agreed to, that the Questions to be put be printed for the use of their Lordships*.

Lord Thurlow concluded with moving, "That their Lordships proceed further in Westminster Hall with the Impeachment of Warren Hastings, Esq. on Thursday next, and that notice be sent to the House of Commons."

THURSDAY, APRIL 23.

The Lord Chancellor rose, and desired that further directions might be given concerning the further proceeding upon the trial of Warren Hastings, Esq. in Westminster Hall.

It was moved to leave out in the *Sixteenth Question* †, agreed to be put to the Lords in Westminster Hall, after the words "not guilty of," the following words, "the residue of the." The same was agreed to, and ordered accordingly. Then it was moved to leave out in the same Question, after "misdeemeanors," the words "or any of them:" the same was agreed to, and ordered accordingly. It was next moved to insert in the same Question, after the words "by the," the following words, viz. "the residue of the:" agreed to, and ordered accordingly.

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The Earl of Charnarvon observed, that the Sixteenth Question ordered to be put to the Peers in Westminster Hall, notwithstanding the alteration it had received, left him in considerable embarrassment, as he doubted whether it was possible to give to it the simple answer of *Guilty* or *Not guilty*, and the order of the House prohibited a qualified or special verdict.

The division of the Articles of Impeachment into several Questions to be put to the Peers as judges, has not been done with sufficient accuracy; so that several matters (contained in the Four Articles particularly discussed in the Committee) which are criminally charged in their respective Articles, have been in the subdivision omitted, and will therefore neither meet with acquittal nor condemnation, except under the last sweeping question. Any person who will compare the Articles of Impeachment exhibited by the Commons, and answered by the Defendant, with the evidence adduced, will see that the questions do not cover all the matter criminally charged in the Articles; and consequently if no more accurate subdivision is made, or more comprehensive question put, as in the First and Second Articles, much criminal matter will escape judgment. As for instance (amongst many others), in the Article relating to Contracts, the exorbitant sum given to Mr. Ferguson for the relinquishment of the Bullock Contract, which might have been terminated by notice without any expence, is charged criminally by the Commons, and is neither comprehended in the terms of the Eleventh nor Twelfth Questions. Several Articles exhibited by the Commons, and answered by the Defendant in his reply at the bar, and opened generally by the Managers, have been supported by witnesses and evidence, produced in the course of the discussion of the particular Articles specially opened; as in the Second Article, much evidence was produced, and some admitted only as applicable to parts of the Ninth, Tenth, and Eleventh, and other Articles, and yet no Question, except the last or Sixteenth Question, comprehends those matters which, whether sufficiently proved or sufficiently refuted, remain subject to the judgment of the Court; though the Managers did not think fit to open them particularly, or dwell further on them after the evidence they had already given. The Second Article on

involved in all those matters which respect the treaty of Chunar, and the conduct of Mr. Hastings towards the Nabob of Oude, that the evidence essential to one could not in possibility be indifferent to the others. The Sixteenth Question supposes a residue of matter criminally charged; for if there is no such residue, the question is idle and nugatory; if there is more than one single fact criminally charged in that residue, the Question should be so framed as to enable those who are to decide to affirm *Guilty* or *Not Guilty*, not only of the whole but of any part. The terms of the Sixteenth Question, as now altered, seem capable of an interpretation by which the answer of *Guilty* must be supposed to apply to ALL the residue charged in the original Articles of Impeachment; and the phrase of *Not Guilty* may seem to imply that he was guilty of no part. To neither of these conclusions does the evidence permit me to subscribe, and consequently I should be obliged, in disobedience to the order of the House, to give a qualified judgment to the Sixteenth Question, which might occasion an adjournment to the Chamber of Parliament, an event productive of inconvenience and ill effect, to be avoided if possible; and the alteration of the words, or at least an explanation from the House that the answer of *Guilty* to the Sixteenth Question is to be understood to mean that the Defendant is guilty of high crimes and misdemeanors charged in some part of the residue, will remove all the difficulty, and no more minute subdivision will then be necessary, unless the Defendant should be found guilty, in which case alone a more accurate calculation of the *quantum* of guilt must precede any possible punishment.

His L ship's observations gave rise to a short conversation between Lord Thurlow, the Lord Chancellor, and other Lords; when it was explained and generally understood in what sense the last or Sixteenth Question was to be taken.

The Lord Chancellor, who had first suggested the propriety of those amendments in the Questions which the House had adopted, next stated the necessity of deciding that he ought to be at liberty not to state to each Lord the whole Question, as it would lead into great length, and answer no useful purpose, since stating it once at large, previous to his beginning to put the

Question upon it to each individual Peer, beginning with the junior Baron, would as effectually answer the end, and save their Lordships much time; but it was necessary to make an order to this effect, ~~the~~ the literal import of the order already made required that he should repeat each Question to every Peer, and desiring him to say whether the Defendant was *Guilty* or *Not Guilty* of each particular Charge.

Lord Thurlow and several other Lords expressed their approbation of the proposed amendment.

A few words passed as to the conduct eventually to be held, if the Managers for the Commons should insist on speaking; but as it did not appear probable that the Managers would urge any such claim, nothing was settled on that point. Had the Managers therefore claimed it as their right, the Lords, in all probability, would have retired to their Chamber of Parliament to debate the propriety of the claim, and adjust their decision upon it.

Then it was moved to amend the Resolution touching the manner of putting the Questions to the Lords in Westminster Hall, by leaving out the word "put" after the word "severally," and inserting instead thereof the word "stated:" agreed to, and ordered accordingly. Also in the same Resolution, after the words "Westminster Hall," to insert the words, "and the following question put:" the same was agreed to, and ordered accordingly. Also in the same Resolution, after the words "junior Baron," to insert the following words, "Is Warren Hastings, Esq. guilty, or not guilty?" The same was agreed to, and ordered accordingly. Then it was agreed by the House and ordered, that the Lord Chancellor having taken the votes upon each of the said Questions shall declare the majority to the House, and also to the Defendant, as soon as he shall be brought to the bar.

The Order of the Day being next read for the proceeding further on the Trial of Warren Hastings, Esq. the Lords were called over by the Clerk at the table. Then the House was adjourned into Westminster Hall, and the Lords proceeded there at half after twelve in the usual form.

Proclamation having been made in the usual way, WARREN HASTINGS, Esq. and his Bail were called into Court, and the Defendant having ~~been~~ ^{been} directed to rise, was ordered to withdraw.

Then the Lord Chancellor stood up and said,

"Your Lordships having fully heard and considered of the evidence and arguments in this case, have agreed upon several Questions, which are severally to be stated to your Lordships in the usual manner."

The Lord Chancellor held, in his hand a list of the titles of the Peers present, who had taken their seats in their robes *, and proceeded to put the First Question to each individual Peer, beginning with the junior Baron, in the following terms:

1.
Is "Warren Hastings, Esq. guilty, or not guilty, of High Crimes and Misdemeanors, charged by the Commons in the First Article of Charge?"

George Lord Douglas (Earl of Morton in Scotland), how says your Lordship, Is Warren Hastings, Esq. guilty, or not guilty, of the said Charge?

Whereupon Lord Douglas stood up, untowered, and laying his right hand on his breast, pronounced—*Not Guilty*, upon my honour.

The Lord Chancellor then put the same question to all the Peers in robes as follows:

James Lord Fife, how says your Lordship?—*Not Guilty*, upon my honour.

Charles Lord Somers, how says your Lordship?—*Not Guilty*, upon my honour.

Francis Lord Rawdon (Earl of Moira in Ireland), how says your Lordship?—*Not Guilty*, upon my honour.

Thomas Lord Walsingham, how says your Lordship?—*Not Guilty*, upon my honour.

Edward Lord Thurlow, how says your Lordship?—*Not Guilty*, upon my honour.

Martin Lord Hawke, how says your Lordship?—*Not Guilty*, upon my honour.

Frederick Lord Boston, how says your Lordship?—*Not Guilty*, upon my honour.

Edwin Lord Sandys, how says your

* The rest of the House, who, either from having been created Peers, or succeeded to their titles since the commencement of the Trial, or who from other motives did not chuse to vote in judgment, stood unrobed about the throne, spectators of the solemnity.

Lordship?—*Not Guilty*, upon my ho-

Henry Lord Middleton, how says your Lordship?—*Not Guilty*, upon my ho-

Samuel Lord Bishop of Rochester (Dr. Horsley), how says your Lordship?—*Not Guilty*, upon my honour.

John Lord Bishop of Bangor (Dr. Warren), how says your Lordship?—*Not Guilty*, upon my honour.

Thomas Lord Viscount Sidary, how says your Lordship?—*Not Guilty*, upon my honour.

George Lord Viscount Falmouth, how says your Lordship?—*Not Guilty*, upon my honour.

Henry Earl of Caernarvon, how says your Lordship?—*Guilty*, upon my honour.

Joseph Earl of Dorchester, how says your Lordship?—*Not Guilty*, upon my honour.

Algernon Earl of Beverley, how says your Lordship?—*Not Guilty*, upon my honour.

Jacob Earl of Radnor, how says your Lordship?—*Guilty*, upon my honour.

William Earl Fitzwilliam, how says your Lordship?—*Guilty*, upon my honour.

George Earl of Warwick, how says your Lordship?—*Not Guilty*, upon my honour.

George William Earl of Coventry, how says your Lordship?—*Not Guilty*, upon my honour.

John Earl of Suffolk, how says your Lordship?—*Guilty*, upon my honour.

George Marquis Townshend, how says your Lordship?—*Not Guilty*, upon my honour.

Francis Duke of Bridgewater, how says your Grace?—*Not Guilty*, upon my honour.

Francis Duke of Leeds, how says your Grace?—*Not Guilty*, upon my honour.

Charles Duke of Norfolk, how says your Grace?—*Guilty*, upon my honour.

David Earl of Mansfield, how says your Lordship?—*Not Guilty*, upon my honour.

William Lord Archbishop of York, how says your Grace?—*Not Guilty*, upon my honour.

Alexander Lord Loughborough, the Lord Chancellor, pronounced—*Guilty*, upon my honour.

Upon the remaining Fifteen Questions the Peers voted in the following manner:

Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misde-

meanors, charged by the Commons in the Second Article of Charge?—*Guilty* 6. —*Not Guilty* 23.

Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdeemeanors, charged upon him by the Commons in the Sixth Article of Charge, in so far as relates to the said Warren Hastings having in the years 1772, 1773, and 1774, corruptly taken the several sums of money charged to have been taken by him in the said years, from the several persons in the said Article particularly mentioned?—*Not Guilty* 26.

4. Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdeemeanors, charged upon him by the Commons in the Sixth Article of Charge, in so far as relates to his having, on or before the 26th of June 1780, corruptly received and taken from Sadanund, the Buxey of the Rajah Chitr Sing, the sum of two lacks of rupees as a Present or gift?—*Guilty* 4. —*Not Guilty* 23.

5. Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdeemeanors, charged upon him by the Commons in the Sixth Article of Charge, in so far as relates to his having, in October 1780, taken and received from Kellaram, on behalf of himself and a certain person called Cullian Sing, a sum of money amounting to four lacks of rupees, in consideration of letting to them certain lands in the province of Bahar in perpetuity, contrary to his duty, and to the injury of the East India Company?—*Guilty* 3. —*Not Guilty* 23.

6. Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdeemeanors, charged upon him by the Commons in the Sixth Article of Charge, in so far as relates to his having in the year 1781 received and taken as a Present from Nundoolol, the sum of fifty-eight thousand rupees?—*Guilty* 3. —*Not Guilty* 23.

7. Is Warren Hastings, Esq. Guilty, or not Guilty, of High Crimes and Misdeemeanors, charged upon him by the Commons in the Sixth Article of Charge, in so far as relates to his having, on or about the month of September 1781, at Chunar, in the Province of Oude, contrary

etary to his duty, taken and received as a Present from the Vizier the sum of ten lacs of rupees?—*Guilty* 3.—*Not Guilty* 23.

Charge, in so far as relates to the Contract for Bullocks granted to Charles Croftes, Esq. ?—*Guilty* 3.—*Not Guilty* 23.

8.
Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdemeanors, charged upon him by the Commons in the Sixth Article of Charge, in so far as relates to his having first fraudulently solicited as a loan, and of his having afterwards corruptly and illegally taken and retained as a Present or gift, from Raja Nobkissen, a sum of money amounting to 34,000l. sterling; and of his having, without any allowance from the Directors, or any person authorized to grant such allowance, applied the same to his own use, under pretence of discharging certain expences said to be incurred by the said Warren Hastings in his public capacity?—*Guilty* 5.—*Not Guilty* 20.

Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdemeanors, charged upon him by the Commons in the Fourth Article of Charge, in so far as relates to his having granted the Provision of Bullocks to Sir Charles Blunt by the mode of Agency?—*Guilty* 3.—*Not Guilty* 23.

13.
Is Warren Hastings, Esq. Guilty, or not Guilty, of High Crimes and Misdemeanors, charged upon him by the Commons in the Fourth Article of Charge, in so far as relates to the several Allowances charged to have been made to Sir Eyre Coote, and directed to be paid by the Vizier for the use of the said Sir Eyre Coote?—*Guilty* 4.—*Not Guilty* 22.

9.
Is Warren Hastings, Esq. Guilty, or not Guilty, of High Crimes and Misdemeanors, charged upon him by the Commons in the Fourth Article of Charge, in so far as relates to his having, in the year 1781, granted a Contract for the Provision of Opium for four years, to Stephen Sullivan, Esq. without advertising for the same, and upon terms glaringly extravagant and wantonly profuse, for the purpose of creating an instant fortune to the said Stephen Sullivan?—*Guilty* 5.—*Not Guilty* 19.

14.
Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdemeanors, charged upon him by the Commons in the Fourth Article of Charge, in so far as relates to the Appointment of James Peter Auriol, Esq. to be Agent for the purchase of Supplies for the relief of the Presidency of Madras, and all the other Presidencies in India, with a Commission of 15 per cent.—*Guilty* 4.—*Not Guilty* 22.

10.
Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdemeanors, charged upon him by the Commons in the Fourth Article of Charge, in so far as relates to his having borrowed money at a large interest, for the purpose of advancing the same to the Contractor for Opium, and engaging the East India Company in a Smuggling Adventure to China?—*Not Guilty* 25.

15.
Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdemeanors, charged upon him by the Commons in the Fourth Article of Charge, in so far as relates to the appointment of John Belli, Esq. to be Agent for the supply of Stores and Provisions for the Garrison of Fort William in Bengal, with a Commission of 30 per cent.—*Guilty* 3.—*Not Guilty* 23.

11.
Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdemeanors, charged upon him by the Commons in the Fourth Article of

16.
Is Warren Hastings, Esq. Guilty, or Not Guilty, of High Crimes and Misdemeanors, charged upon him by the residue of the Impeachment of the Commons?—*Guilty* 2.—*Not Guilty* 25.

DISTINCT SUMMARY OF THEIR LORDSHIPS VOTES,
PRONOUNCED ON THE DEFENDANT.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Lord Douglas, (E. of Morton)	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Fife	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Somers	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Rawdon, (E. Moira)	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Wallingham	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Thurlow	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Hawke	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Bolton	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Sand's	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Middleton	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Bishop of Rochester	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Bishop of Bangor	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Viscount Sidney	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Viscount Falkmouth	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Earl of Carnarvon	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Earl of Dorchester	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Earl of Beverley	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Earl of Radnor	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Earl Fitzwilliam	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Earl of Warwick	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Earl of Crenvry	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Earl of Suffolk	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Marquis Townshend	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Duke of Bridgewater	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Duke of Leeds	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Duke of Norfolk	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
E. of Mansfield, (L. President)	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Lord Archbishop of York	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
L. Loughborough (L. Chan.)	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.	N.G.
Total, Not Guilty,	23	26	23	23	23	23	23	20	19	25	23	23	22	22	23	25
Guilty,	6	—	4	3	3	3	3	5	5	—	3	3	4	4	3	1

Having thus collected the Judgment of their Lordships * on each of the Sixteen Charges, the Lord Chancellor declared that a large majority of the Lords present had answered the said several questions in the negative;—and then declared, “That WARREN HASTINGS, Esq. is **ACQUITTED** of the Articles of Impeachment exhibited against him for High Crimes and Misdemeanors, and all things contained therein.”

Then the Defendant was ordered to be called to the bar, and kneeling, was bid to rise.

Then the Lord Chancellor said,

“Warren Hastings, Esq.
“I am to acquaint you that you are
“**ACQUITTED** of the ARTICLES
“OF IMPEACHMENT, &c. exhibit-
“ed against you by the House of Com-
“mons for High Crimes and Misdemeanors, and all things contained therein,
“and you are discharged, paying your
“fees.”

Mr. Hastings bowed respectfully, and retired.

The Lord Chancellor then put the question, “Is it your Lordships pleasure to adjourn to ~~our~~ Chamber of Parliament?”—Ordered: and their Lordships adjourned accordingly to their Chamber of Parliament.

* The Hall was much more crowded when the Peers pronounced their opinions severally on each Charge, and Judgment was given, than it had been on any preceding day of the Trial, or perhaps on any former occasion.

END OF THE TRIAL.

WE annex another LIST * of the CHANGES in the HIGH COURT of JUSTICE in GREAT BRITAIN, pending the TRIAL of Mr. HASTINGS, as a matter that may gratify the curiosity of a future Age †.

DUKES.

Cumberland	St. Alban's	Montrose (Earl	Newcastle
Chandos	Leeds	Graham)	Bulton
Manchester	Montague	Somerlet	

* See the former List in PART VI. Page 69.

† The greatest number of Lords that sat at any time on this Trial was one hundred and sixty-eight; but this number only assembled on Mr. BURKE's opening Speech, Mr. SUTHERLAND's Summary of the Begums, or on some extraordinary occasion. In general the Court consisted of from thirty to fifty Lords. By this List the reader will see that there have been one hundred and eighty changes in the House of Lords pending this Trial; a circumstance that must occasion serious and awful reflection amongst all those who venerate the British Constitution. In all common Criminal Trials the process closes in one day. But we are well aware that circumstances may arise in which a Criminal Trial must be protracted to a later period. Yet upon all other occasions than the present, the principle of the Law of England has been closely adhered to. The Legislature passed a law in 1786, in the trial of persons accused of having committed crimes in India. By the provisions of that Law, when a Criminal Trial had commenced, the Court was to sit every day until the conclusion; Christmas Day, Good Friday, and Sundays excepted. Fifteen was the greatest number of the Court. If one of this number was absent one day, he was incapable of sitting any longer as a Judge on the Trial. Absence, unless occasioned by sickness, might be punished by fine or imprisonment. Ten Judges might compose the Court, but if one of the ten was to be incapable of attendance, then the whole proceedings were void, and the Trial must begin *de Novo*. By this Law the Legislature wisely provided for two important points: The first, that the Judges who heard the Trial should pronounce the Judgment; the second, that when the Trial had commenced it should be continued, day by day, to its close; Sundays, Christmas Day, and Good Fridays excepted. But in this Criminal Trial of Mr. HASTINGS, one generation passed away, and Noble Lords, who were boys at Eton and Westminster when the Trial began, had an undoubted right to pronounce Judgment when the proceedings were closed. These remarks are offered solely in the hope that independent men will take the subject seriously into consideration, in order that a similar evil may be avoided in future.

MARQUIS.
Marquis of Hertford.

EARLS.

Huntingdon	Hardwicke	Strafford	Stanhope
Ferrers	Oxford	Cowper	Orford
Paulet	Frederick Earl of	Waldegrave	Talbot
Effingham	Guildford	Kinnoul	Mansfield
Francis Earl of	Abercorn	Mount Edgumbe	Exeter
Guildford	Digby	Camden	Buckinghamshire
Darlington	Clarendon	Hillsborough	Macclesfield
Pomfret	Sandwich	Bathurst	Exeter

VISCOUNTS.

Montague	Courtenay	Montague
Bolingbroke	Dudley and Ward	

BARONS.

Le Despencer	Heathfield	Dover	King
Say and Sele	Craven	Mulgrave	Dacre
Grantley	Romney	Folk	Sondes
Boringdon	Rodney	Elphinston	Ponsonby
Berwick	Gage	Camelford	Harewood

BISHOPS.

Dr. Shipley, of St. Asaph.	Dr. Rofs, of Exeter
Halifax, of St. Asaph	Horne, of Norwich
Beaucklerk, of Hereford	Wilson, of Bristol
Harley, of Hereford	Thomas, of Rochester
Law, of Carlisle	Hinchliffe, of Peterborough.
Thurlow, of Durham	

SCOTS PEERS in the last Parliament, but not in this.

Marquis of Lothian	Earl of Galloway
Earl of Caithness	Hopetown
Aberdeen	Dunmore
Selkirk	Kinnaird

CREATIONS.

Duke of Clarence	Lords Grimstone	Lords Douglas	Lords Lyttelton
Lords Heathfield	Mulgrave	Douglas	Mendip
Kenyon	Dundas	Gage	Bradford
Dover	Curwen	Grenville	Selfey
Malmesbury	Douglas, Earl of	Auckland	Yarborough
Fisherwick	Morton	Upper Oflory	
Fife	Harewood	Clive	

NEW BISHOPS.

Dr. Douglas, of Salisbury	Dr. Buller, of Exeter
Cleaver, of Chester	Madan, of Peterborough
Stuart, of St. David's	Sutton, of Norwich
Beadon, of Gloucester	Hortley, of Rochester
Horne, of Norwich	Courtenay, of Bristol.
Vernon, of Carlisle	

NEW PEERS of SCOTLAND.

Earl of Kerry	Earl of Glasgow
Lammerdale	Torphichen
Dumfries	Baron Somerville
Elgin	

PEERS who have succeeded by Descent.

Duke of Manchester	Viscount Montague	Viscount Dudley
Newcastle	Bolingbroke	and Ward
Montrose, Earl of	Courtenay	Barons Craven
Graham	Gage	Montague of
Somerset	Earls Strafford	Boughton
Marquis of Winchester	Effingham	Clinton
Hertford	Hillsborough	Rodney
Earls Ferrers	Exeter	Camelford
Paulet	Mansfield	Foley
Clarendon	Bathurst	Say and Sele
Sandwich	Guildford	Grantley
Pomfret	Darlington	Heathfield
Hardwicke	Buckinghamshire	Dinevor
Orford	Macclesfield	Romney
Marquis of Abercorn	Mount Edgcumbe	Sondes
Earls Kinnoul	Camden	Ponsonby
Stanhope	Digby	
Oxford	Albemarle	

Total Peers dead, or Scots Peers in the last but not in this Parliament 87

Total Creations, new Bishops, and new Scots Peers 44

Total Peers succeeding by descent 49

Total changes since the Impeachment 180

N. B. Two Dukes of Somerset, two Earls of Guildford, two Viscounts Montague, two Bishops of Hereford, and two Bishops of St. Asaph, have died since the Trial of Mr. Hastings commenced.

MANAGERS out of Parliament :

Mr. Burke

Mr. Adam

Mr. Montague.

DEAD :

General Burgoyne.

ON FOREIGN SERVICE, out of the Kingdom :

Sir Gilbert Elliot

Sir J. Erskine St. Clair.

Succeeded to PEERAGES :

Lord North

Lord Maitland

9 out of 20 changed.



A C C O U N T
OF THE
P R O C E E D I N G S
AT A
GENERAL COURT
OF THE
HON. UNITED EAST-INDIA COMPANY,
ON FRIDAY, MAY 29, 1795,

O N T H E

MOTION MADE BY MR. ALDERMAN LUSHINGTON FOR THAT COURT'S GRANTING WARREN HASTINGS, Esq. AN INDEMNIFICATION FOR THE LEGAL EXPENCES OF HIS TRIAL; AS ALSO AN ANNUITY OF 5000L. PER ANNUM, FROM JAN. 1, 1795.

EAST-INDIA HOUSE,
GENERAL COURT,
FRIDAY, MAY 29, 1795.

AT A COURT of the Honourable UNITED EAST-INDIA COMPANY, convened at the desire of Nine Proprietors,

P R E S E N T,
SIR STEPHEN LUSHINGTON,
CHAIRMAN.
DAVID SCOTT, Esq. DEPUTY
CHAIRMAN.

With most of the Directors, and a most numerous appearance of the Generality.

The CHAIRMAN informed the Court, that this Court was called at the desire of Nine Proprietors, and submitted that their Letter should be read, which was as follows :

TO THE HONOURABLE THE
COURT OF DIRECTORS, &c.
Gentlemen,

WE request that a General Court may be called, to take into consideration the long, faithful, and important services of WARREN HASTINGS, Esq. late Governor General of Bengal ; and agreeably to the 48th By law, we desire that notice may be given that a pecuniary compensation will be proposed, suitable to the importance of

those services, and the present situation of Mr. Hastings.

We have the honour to remain,
GENTLEMEN,
Your very obedient humble
Servants,

London, 13th May 1795.

(Signed) W. LUSHINGTON,
A. M. FRENCHCHISWELL,
RD. TWINING,
ROBERT PRESTON,
EDWARD BLACKETT,
WILLIAM BLAAUW,
KINNAIRD,
ROW. STEPHENSON,
DON. CAMERON.

The following particulars were called for and read, viz.

Extract of a separate Letter to Bengal, dated Sept. 21, 1785.

" When we consider the alarming
" decline of the Salt Revenue, in the
" year 1780, and for which no remedy
" seemed for some time to present it-
" self, we acknowledge ourselves in-
" debted to the abilities and zeal of
" Mr. Hastings, for a plan suggested
" and completed by him, which not
" only retrieved that branch of Trade
" and Revenue, but produced an ef-
fective

"fective benefit to the Company, beyond our most sanguine expectations."

Extract of a Letter from Mr. Calvert, the Salt Comptroller, to the Governor General in Council, dated 18th February 1783, entered on the Bengal Public Comptrols, of the 25th March following.

It was then moved, and on the Question being put,

Resolved unanimously, That this Court is highly sensible of the long, faithful, and important services of Warren Hastings, Esq. heretofore repeatedly acknowledged by this Court, and the Court of Directors.

The following Motion was also made, viz.

Resolved, That the Charges made against Warren Hastings, Esq. having been founded upon the public acts of his Government in Bengal, and he having been acquitted of all such Charges, it is highly reasonable that the said Warren Hastings, Esq. should be indemnified for the legal expences incurred by him in making his Defence.

An Amendment being proposed thereto, leaving out the words after the word "that," in order to introduce the following, viz. "It be recommended to the Court of Directors to take into their consideration the services of Warren Hastings, Esq. late Governor General of Bengal, and to report their opinion to this Court, in what mode, and to what extent it may be expedient to grant a pecuniary compensation for the same;"

A Debate took place, in the course of which, Sect. 17, 18, and 19*, of the Act of the 33d Geo. III. Cap. 52, as also the Opinion of the Company's Standing Council, as to the competency of the Company to make the aforesaid Indemnities, without the approval and confirmation of the Commissioners for the Affairs of India, being called for, was delivered;

And the question being put, "That the words proposed to be left out,

"stand part of the Question," the same passed in the affirmative. It was then, on the Question,

Resolved, That the Charges made against WARREN HASTINGS, Esq. having been founded upon the public acts of his Government in Bengal, and he having been acquitted of all such Charges; it is highly reasonable that the said WARREN HASTINGS, Esq. should be indemnified for the Legal Expences incurred by him in making his Defence.

The following Motion was made, viz.

Resolved therefore, that this Court do recommend to the Court of Directors, to apply to WARREN HASTINGS, Esq. for a statement of the said expences, and that after having established the same, by a full and satisfactory investigation, they do discharge the amount thereof.

The Chairman submitted to the Court, whether the said Motion should not go to the Ballot.

And it being proposed, that the words "not exceeding 71,080l." be added to the foregoing Motion, the same was agreed to be added accordingly, standing as follow: viz.

Resolved therefore, That they discharge the amount thereof, not exceeding 71,080l.

An Amendment was proposed to the said Motion (provided the same can be legally done). And the question thereon being put, it passed in the negative. It was then

Resolved, That the above Question be put by the Ballot at this House, on Tuesday next, the 2d of June.

The following Motion being then made, viz.

Resolved, That it is the opinion of this Court, that, in consideration of the long, faithful, and important services of WARREN HASTINGS, Esq. and to mark the grateful sense entertained by this Company of the extensive benefits which they have received from

* Section 17 provides that the Board of Commissioners shall not direct the increase of established salaries, unless proposed by the Directors, and laid before Parliament. Section 18, the Board shall not direct any gratuity, but such as shall be proposed by the Directors, &c. Section 125 directs that no grant of new salaries, &c. above 200l. shall be good, unless confirmed by the Board.

these services, a Grant of an Annuity of 5000l. from the 1st of January 1795, to issue from the territorial revenue, during the term of the Company's present exclusive trade, to WARREN HASTINGS, Esq. his heirs, executors, administrators, and assigns, be prepared by the Court of Directors, and submitted to the Board of Commissioners for the Affairs of India, for their approval and confirmation, pursuant to the Act of Parliament

And the Chairman submitting to the Court, "Whether the said Motion should not go to the Ballot,"

Resolved, That the same be put by the Ballot at this House, on Wednesday, the 3d of June.

The Court then, on the Question, adjourned.

The preceding MINUTES state the subject and mode of proceeding adopted in the DEBATE, of which the substance follows :

Mr. Alderman Lushington, in a speech of considerable length, reviewed the public life of Mr. Hastings even from his "boyish days." Mr. Hastings, he said, went out a Writer in the year 1749, many years prior to that period when an opening was given for the foundation of that immense Empire which Great Britain possesses in India at this moment. Before the capture of Calcutta by Surajah Dowlah, in 1756, Mr. Hastings had distinguished himself by his accurate knowledge of the language, manners and customs of the people of Bengal, and it was this knowledge which recommended him to the confidence of Lord Clive; by whom, after the Revolution of 1757, he was appointed Resident, or Minister at the Court of the Nabob, Jaffer Ally Cawn. In that situation he continued from 1758, until he became a Member of the Government, in 1761; a situation in which, if money had been an object to him, he might have acquired a fortune almost to any amount. He continued a Member of the Government of Bengal until February 1765, when he resigned the service, and returned to England. Mr. Hastings continued in England from February 1765 until March 1769, when he was sent out as second in Council to Fort St. George. It was known well, that so very moderate a fortune did he bring

home with him in 1765, that before the prospect opened to him, of returning again to India, he had, in concert with the late learned Dr. Johnson, formed a plan for establishing a Professorship in the University of Oxford for the study of the Persian language.—Fortunately, however, Mr. Hastings was again called into public employment, and was appointed second in Council at Madras, and to succeed Mr. Dupré in that Government. In August 1771, the Directors removed Mr. Hastings to his old establishment Bengal, and ordered that he should succeed Mr. Cartier. During the two years and a half Mr. Hastings remained at Madras, his conduct as second in Council received the marked approbation of the Court of Directors, and he was in the highest degree of estimation with his fellow-servants, and with the Nabob and his subjects. In April 1772, he became Governor of Bengal, and quitted it in February 1785. If the whole history of his Government were to be comprized, it may be said, in the fewest possible words, that in that period he preserved our Empire against the most formidable combination ever formed for its destruction; that he considerably extended its bounds, and nearly doubled its annual resources. These were facts of such general notoriety, that perhaps it would be wasting time to expatiate more fully upon them—it might however be asserted, that the present prosperity of Bengal, and its advantageous connection with foreign States, originated in the measures adopted by Mr. Hastings in the two first years of his administration. Before his Government commenced, the income and the expenditure of Bengal barely balanced each other; but by his arrangements, he was enabled to perform the above important services, of which that Court had declared its fullest sense.—He was sorry to say, that in another place a difference of opinion did at one time prevail. By two Committees of the House of Commons very strong disapprobation was undoubtedly expressed of all those acts from which so many advantages were derived by the Company. The fact was this: That the measures condemned by the Reports of the Committees of the House of Commons, and which furnished the grounds for the Impeachment of Mr. Hastings, did actually produce to this Company,

adding

Adding the interest to the principal, the sum of Thirty-four Millions Seven Hundred and Seventy Thousand Pounds, and will produce in future an annual revenue of more than two Millions sterling. It is well known, that when Mr. Hastings left Bengal in February 1785, he had every reason to believe, there would not be a second opinion as to the importance of his services, or the reward which they merited from his employers. By the natives whom he had governed, he was undoubtedly so well beloved, that their powerful voice attended him in the hour of his trial, when the charge against him was, having plundered and oppressed them. By the Army and his fellow-servants he was so highly respected, that the witnesses selected to appear in support of the prosecution have given him as high a character as man could receive. By His Majesty's India Minister he was declared in Parliament to have been the favourer of India. By the Gentlemen behind the bar, he was gratified by an unanimous vote of thanks for his long, faithful, and able services, and the Court of Proprietors had invariably supported him. Notwithstanding these concurring circumstances, he was accused as a criminal before the late House of Commons and so extensive was the original Charge, that it included every act of the Government of a great Empire for thirteen years, civil, military, political, and financial. Such an accusation of course included all those measures by which Bengal has been raised to its present prosperous situation, and Mr. Hastings has actually been eight years under trial for being the author of the prosperity now enjoyed by the Company. The end is well known; many of the original Charges were abandoned, and after a trial of eight years in duration he has been acquitted of the whole.—To defend himself against such a mass of accusation, no private fortune could be sufficient, unless indeed that of Mr. Hastings were of a size which some have imputed it to be, and unless the accusation of the Commons were true, that in all his measures he was actuated by the base and sordid view of acquiring for himself and his dependants exorbitant wealth. He was ready to admit that some of Mr. Hastings's measures were strong and decisive, but were not the measures calculated to

preserve the affairs of the Company from utter ruin? The length of trial could not be imputed as a crime to Mr. Hastings: it was surely his interest to have terminated it in seven months instead of seven years. He held in his hand a statement of Mr. Hastings's affairs, which he was authorized to say would be verified upon oath, and from which it appeared that at no period of his life was he worth One Hundred Thousand Pounds, and at this moment his debts amount to more than Eighty-five Thousand Pounds, and his effects, his estate at Daylesford, and a share in two Indianmen; so that in truth, without this Court shall pay his law expences, he must give up all he has in the world, to enable him to pay his creditors ten shillings in the pound.

But it had been often observed, that though Mr. Hastings possesses no fortune, Mrs. Hastings has a very considerable one. Her fortune, which arises from a settlement made upon her at her marriage, and with additions which she has made to it, by the sale of some jewellery, amounts to 30,000*l.* and a house in Park-Lane, which is valued at 10,000*l.* in all, 40,000*l.*; and this, to the best of Mr. Hastings's knowledge and belief, is the full extent of her fortune. These circumstances he stated as grounds in support of his Motion for an Annuity.

With respect to the payment of the law expences, he deemed that to be a mere act of justice, which would not be refused to Mr. Hastings, because the Company had been in the habit of paying the law expences incurred by their servants in the discharge of their public duty. It was done every day, to Captains of Ships. It was done in the case of Mr. Verelst, who was fined, and had both his fine and expences paid by the Company. It was impossible, therefore, to refuse it in the case of Mr. Hastings, who had been acquitted, and whose condemnation must have involved in it the ruin of the East-India Company.

In regard to the second Motion, Mr. Luthington said, it appeared perfectly clear, from the statement of Mr. Hastings's fortune, that after the payment of his law expences by this Court, Mr. Hastings would owe 15,000*l.* with property to answer it, undoubtedly, that is, his share of two Indianmen, and the estate of Daylesford, which,

which, if sold for this purpose, would leave him without a subsistence; at least, with a very scanty one indeed. He would therefore propose to give to Mr. Hastings a sum of money annually, amounting to the interest on y of a single Present made to himself, and given to the Company. The amount of the Presents given to Mr. Hastings, and accounted for by him to the Company, is 230,000*l*. Of this sum, 100,000*l*. was given to him by the Nabob and his Ministers in 1781. Mr. Hastings immediately expended it in the pay of the troops, and in other public services; but he applied to the Directors for this sum to be given to him at a future period, owing to the narrowness of his fortune. The application was much talked of, both in Parliament and here, at the time, 1782; and a very leading Proprietor, afterwards a Director (the late Governor Johnstone), declared, that though he would not give Mr. Hastings that Present, because it might form a bad precedent, yet he would vote for making up Mr. Hastings's fortune 10,000*l*. a year. Mr. Lushington did not wish to go so far. He did not wish to propose giving him one per cent. upon the additional income he had created for this Company, as that would produce 25,000*l*. a year; but would propose that the Court should vote Mr. Hastings what had been voted to his successor, the Marquis Cornwallis, 5000*l*. a year, to the expiration of the Charter. He knew this vote would not be conclusive; but as the public services of Mr. Hastings had been so fully acknowledged by his Majesty's India Ministers, he trusted that they would honour this mark of the Company's sense of Mr. Hastings's services with their approbation, as they had done a similar grant to Lord Cornwallis.

He then desired the repeated thanks of the General Court and the Court of Directors to be read, as also a letter from the Directors, under the approbation of the Board of Control, to Bengal, in which they acknowledge his Company to be indebted to the zeal and abilities of Mr. Hastings, for plan, by which the revenue arising from Salt now produces a Million sterling a year.

These papers having been read, Mr. Lushington read the four following Motions:

Resolved, "That this Court is
"highly sensible of the long,
"faithful, and important services
"of WARREN HASTINGS, Esq.
"heretofore repeatedly acknow-
"ledged by this Court and the
"Court of Directors."

"Resolved, That the Charges made
"against WARREN HASTINGS,
"Esq. having been founded upon
"the public acts of his Govern-
"ment in Bengal, and he having
"been acquitted of all such
"Charges, it is highly reasonable
"that the said WARREN HAS-
"TINGS, Esq. should be indem-
"nified for the Legal Expenses in-
"curred by him in making his
"Defence."

Resolved, therefore, "That this
"Court do recommend to the
"Court of Directors to apply to
"WARREN HASTINGS, Esq. for
"a statement of the said expenses;
"and that, after having ascertain-
"ed the same, they do discharge
"the amount thereof."

Resolved, "That it is the opinion
"of this Court, that, in conside-
"ration of the long, faithful, and
"important services of WARREN
"HASTINGS, Esq. and to mark
"the grateful sense entertained
"by this Company of the ex-
"tensive benefits which they have
"received from these services, a
"Grant of an Annuity of 5000*l*.
"from the time of his return,
"to issue from the territorial re-
"venue, during the term of the
"Company's present exclusive
"trade, to WARREN HASTINGS,
"Esq. his heirs, executors, ad-
"ministrators, and assigns, be pre-
"pared by the Court of Directors,
"and submitted to the Board of
"Commissioners for the Affairs of
"India, for their approval and
"confirmation, pursuant to the Act
"of Parliament."

After this, he delivered his first Motion over the Bar, and was seconded by Mr. Chitwell, who, in addition to what had before been stated, observed, that not one single complaint had come from India against the measures of Mr.

months, perhaps in as many weeks.—

It was a gross and scandalous violation of the fundamental maxims of the law and the Constitution, and one of the dearest inherent rights, with which and to which every Briton was born, namely, the speedy administration of justice. It was in vain that some men were eternally pronouncing warm eulogiums upon Liberty, or glowing panegyrics upon the Constitution, while so flagrant an instance as a seven years trial, at an expence of 70,000*l.* stained the page of their history. Every discriminating foreigner would laugh them to scorn, and ask, Is this your Liberty? and is such your Constitution? Let Mr. Hastings, then, first apply to his Country, to which, with so much justice, he might prefer his claim. If he missed of indemnification, his Country would lose its character; and if such should be the case, and Mr. Hastings meet with a refusal, he would not deny but that if he came back to that Court, as to his old friends and employers, and candidly told them, that without their further kindness he must sink, he should feel as anxious as any man, to administer to him every consolation which great minds are susceptible of, as far as was consistent with the circumstances of the Company.

Mr. Jackson then noticed how much the honour of the General Court was concerned, in abstaining from a Resolution which could have no legal effect. He reminded them how successfully the argument of hasty and tumultuary Resolutions, and their contravening both the Government and their Directors, had been used, when an attempt was made, under Mr. Fox's Bill, to annihilate General Courts altogether, though, notwithstanding some instances of abuse, they had proved the wisest check that could have been contrived, and did, upon that very occasion, save the Company. Under these impressions, he said, and from his great anxiety to prevent a precedent which might at some future time be fatally perverted, he should move, by way of Amendment to the second Resolution,

Here he was interrupted by its being observed by several Gentlemen, that the second Resolution was not yet before the Court; and as they appeared to be no difference of opinion about the first, that which went to a general ac-

PART VIII.

knowledge of the important services of Mr. Hastings, it was submitted to the Court, whether it would not be better to put the Question upon that, before they proceeded to discuss the merits of the second?

This being agreed to, the first Motion was voted unanimously.

Mr. Alderman Lushington then rose to move the second, which was as follows:

"That the Charges made against Warren Hastings, Esq. having been founded upon the publick acts of his Government in Bengal, and he having been acquitted of all such Charges, it is highly reasonable that the said Warren Hastings, Esq. should be indemnified for the Legal Expences incurred by him in making his Defence." The Motion being handed to the Chair, and read in form,

Mr. Jackson rose again, and moved by way of Amendment to the second Resolution, that after the word "Resolved," the whole of the words of that Resolution should be left out, and the following inserted in their stead, viz.

"That it be recommended to the Court of Directors to take into their consideration the services and situation of Warren Hastings, Esq. late Governor-General of Bengal, and to report their opinion to this Court, in what mode, and to what extent, it may be expedient for the Proprietors to grant a Pecuniary Compensation for the same."

This Amendment being seconded by Mr. Bryan Troughton,

Major Scott rose and said, that nothing would have induced him to have offered himself to the attention of the Court on the present day, but the circumstance of his being well informed of some facts, which perhaps were not so accurately known by other Gentlemen, and which it was very important to state on this occasion. It seemed to be the unanimous opinion of the Court, that the expences incurred by Mr. Hastings in the course of his trial ought to be paid; but the Learned Gentleman who spoke last, and another Learned Gentleman who preceded him, had both declared that it was unfair and unjust to make such a demand upon the Company, until Mr. Hastings had first tried the House of Commons, who, in justice, ought to pay the legal expences. Major Scott

O o

said,

said, that those Gentlemen spoke the sentiments of Mr. Hastings most exactly, and in his own words. In every discussion upon this subject amongst his friends, as often as it was mentioned, this, in return for the great benefits which the Company had received from his Administration, there could be no doubt of their indemnifying him for his expences, and rewarding him for his services. Mr. Hastings replied, that he trusted to the Company for such a remuneration as they might think him, under all the circumstances of the case, entitled to for his services; but with respect to his expences, he conceived that he had not the slightest claim upon the Company, until he had tried the House of Commons, because Gentlemen of all parties in that House had recognized the justice of his claim to indemnification at various stages of the Trial, in the event of his acquittal. Major Scott said, that notwithstanding this had been the language of Gentlemen in the House while the Trial was pending, yet there was hardly one Member to whom Mr. Hastings applied, that did not strongly dissuade him from trying the House of Commons, assuring him at the same time that he had not the most distant chance of success. Mr. Hastings however, who was not deterred from doing what he conceived to be right, even by the almost unanimous dissent of his private friends in the House of Commons, wrote a Petition, couched in the most moderate language, in which he set forth that he had been thirteen years Governor or Governor-General of Bengal, in times of great difficulty and danger: That he had formed a system for the internal Government of Bengal in the first period of his Administration; had repelled the attacks of our foreign enemies in the second period; and finally had left it, with its resources considerably augmented, and in a state of great prosperity: That to his misfortune, however, the late House of Commons thought differently of his conduct, and in the end he was impeached; twenty Articles were preferred against him, which included every important act of his Government for the space of thirteen years, Civil, Military, Political, and Financial: That to defend himself against such a variety of Charges, a very great expence was necessarily incurred; for though it was true, that the House ultimately rested the cause upon four points, yet he was uninformed of this

intention, until the fourth year of his Trial: That the total legal expence of the Trial exceeded Seventy Thousand Pounds, of which more than Sixty Thousand Pounds were still unpaid: That as he had been fully acquitted of all the Charges, and as he was convinced it was not the intention of the House that had impeached him, to ruin him by the necessary expences in making his defence, even if he had been guilty; still less could it be the intention of the present House to leave him involved in utter ruin, after so complete an acquittal. He therefore humbly presumed to lay his unprecedented Case before the House, praying for such relief as in their justice and wisdom they might think him entitled to. Major Scott said, that he had not a Copy of the Petition in his pocket, but he believed he had with tolerable accuracy detailed its most material contents to the Court. His Honourable Friend (Mr. Chiffwell) had already stated that the Petition was submitted to the Minister, and unless Mr. Pitt signified his Majesty's consent to its being presented, the Petition, consistently with the forms of the House, could not be presented at all. Mr. Pitt, as the Court already knew, had said, that he could not with propriety advise his Majesty to allow him to signify such assent. What then could Mr. Hastings do? The door of the House was barred against him. He was not a Member himself, and as the sentiments of the Opposition were also pretty well known to be hostile to the Petition, what individual Member would hazard a Motion, with an absolute certainty of its being negatived? Every Member would act upon his own feelings, but Mr. Hastings was left without a choice. The language of many Members had certainly been, that the Company had benefited by all those acts of Mr. Hastings which the last House of Commons had condemned; consequently the Company was the proper Body to apply to. The Minister stopped the direct mode of application, for reasons which doubtless would fully justify him for acting as he had done. Mr. Hastings, therefore, had no resource left, but an application to that Body, in whose service he had been for so many years, and who had so repeatedly admitted the value and importance of his services.—Major Scott said, that after the forcible and eloquent speech of the Honourable Gentleman who opened the

business

Business, it would indeed be superfluous to add a single word, unless as it applied to the observations of those Gentlemen, Members of the House of Commons, who conceived that the Company, and not the Nation, ought to pay the law expences. In truth, the Major said, the East-India Company had been tried, for seven years, in the person of Mr. Hastings; perhaps he might carry it still higher, he might say, that in the person of Mr. Hastings, the British Nation had thought proper to inquire whether it could, with any regard to character, honour, or morals, continue to enjoy the immense advantage which she annually drew from India, and of which the King's Ministers annually and loudly boasted. The result of the measures of Mr. Hastings certainly was this, that above two millions sterling were added to the annual resources of the Bengal Government; that is, when Mr. Hastings came to the Government of Bengal, the total annual resources were three millions one hundred and thirty-two thousand pounds; when he quitted them, they were five millions two hundred and eighteen thousand pounds; and by the continued operation of the system established by Mr. Hastings, they were increased to five millions and a half. The Major then desired the Court to consider for one moment—for what had Mr. Hastings been impeached? It was hardly necessary to tell them, that he was impeached for all that system of foreign and domestic policy, which considerably extended their empire, preserved it from foreign enemies, and which added two millions a year to the resources of the East-India Company. But they were not merely to consider the justice of paying expences incurred in defending the propriety of measures by which they had so highly benefited; they were also to consider, that in the event of the condemnation of Mr. Hastings, the Company must have been utterly and irretrievably ruined.—He would not take the large ground on which the Impeachment originally rested, but confine himself to the three points on which evidence was given, that jointly selected Mr. Hastings and the East-India Company—these were, Benares, the Begum, and the Presents. In the charge of Benares, Mr. Hastings was accused of unjustly expelling Cheyt Sing, and criminally extorting an additional rent of

two hundred thousand pounds a year from the present Raja. That additional rent has been paid ever since 1781; consequently, with the interest, the expulsion of Cheyt Sing has brought above five millions into the public treasury. The Begum's moiety, with interest, is one million eight hundred thousand pounds; and the Presents received by Mr. Hastings for the Company, with the interest upon them, would now be nine hundred thousand pounds. A total of eight millions, besides a diminution of 200,000*l.* a year from the future rent of Benares.

Major Scott said, that upon no principle of justice, honour, or common sense, could Mr. Hastings have been found guilty, and the Company left to enjoy the fruits of rapine, oppression and plunder. Indeed if there were any Gentlemen in the Court, as he had no doubt there were, who were in Westminster Hall the last day of Mr. Sheridan's speech, they must recollect, that that Gentleman, in the most distinct and unqualified terms, declared, that the prosecution of Mr. Hastings was undertaken for the express purpose of *doing Justice to India*. To punish the oppressor was certainly an object, said Mr. Sheridan, but trifling indeed, when compared to the more important one of *redressing the Wrongs of the Oppressed*. He admitted it to be true, that many millions had been acquired by the acts of Mr. Hastings. But the Lords, as Judges, were not to look to any consequences that might result from his condemnation. Cheyt Sing, if Mr. Hastings were found guilty, must be sought out, whether he were in a Mahratta Camp, or with Tippon Sultan. He must be restored precisely as he stood in 1781; and the interest of the additional rents received must be repaid to him. The Begum must also have her money back, with interest. The Presents must likewise be restored to those from whom they were received. All this must be done by the Company, if its funds would answer for so many millions! if not by the House of Commons, economical as they were. To suppose that the Nation would punish Mr. Hastings for being an oppressor, yet meanly enjoy the fruits of his oppressions, was most basely to libel her. Such, the Major said, was the concluding Speech of Mr. Sheridan, when representing, in Westminster Hall, all the People of Eng-

land. Shall it then be said, that Mr. Hastings only was tried? Impossible! His acquittal is a matter of infinite moment to the East-India Company in a pecuniary point of view; but, said the Major, it is of infinite moment indeed, in points of much greater consequence—it has preserved pure and unfulfilled the honour of the Company and of the British Nation. It has cleared both from those vile and detestable calumnies which have been circulated against the Company, and against the Nation as connected with this Company for so many years. The world will now believe that solemn truth, so often asserted by the King's India Minister, and by every man possessing any knowledge of the subject, that the Government of Great Britain has been a blessing, and not a curse, to the millions under its rule: That our subjects are the happiest and the best protected people in India: That Bengal has been in a progressive state of improvement from the first period of Mr. Hastings's Administration to the present day. By the acquittal of Mr. Hastings, the justice as well as the wisdom of those measures are fully established, by which sums were received, amounting, with interest, to above Thirty-Four Millions sterling, and additional Revenues actually created, exceeding Two Millions sterling a year; and we may now be said to hold securely, what prior to the acquittal of Mr. Hastings we held by a very precarious tenure. In this point of view, and so it must be considered, his acquittal is a most important subject for triumph, both to the Company and to the Nation; after having done so much for both; leaving India as Mr. Hastings did after a thirteen years Administration, with its Revenues so greatly improved; preserving it, as he did, in the last general War against the most powerful combination ever formed for the destruction of a single State. Beloved, respected, and regretted as he was when he left India, and retaining to this moment, as he has done, all the affections and esteem of the people whom he governed so long, and the general regard of his countrymen who have served in India, after having gone through an ordeal of seven years, will this Company, adopting the sentiments of two Learned Gentlemen, say to Mr. Hastings, "We think you have been the most profitable and able ser-

vant to us, we always thought so, you ought to be paid your expences, you ought to be rewarded; but we did not prosecute you, it was the House of Commons, it was the British Nation—let them pay, as they ought to do." Mr. Chairman, this Company will not hold such language. They know that Mr. Hastings thought, as the Learned Gentlemen do, that in equity he had a fair claim upon the House of Commons; but had he the power to enforce his claim? Could he compel those who thought differently as to the justice of his claim, to change their opinions? No—he could not—He had no means of bringing his case even before the House of Commons; for no individual Member, knowing the sentiments both of the Minister and of the Opposition, would be very fond of moving the question. Was he then between two stools to fall to the ground? Impossible! Mr. Chairman, I have the fullest confidence both in the justice and the generosity of the Court to a servant whom they have repeatedly thanked for his exertions, and to whom the Court of Directors, after all his acts were before them, returned unanimous thanks for long, faithful, and able services.

Mr. Jackson in reply to Major Scott observed, that the Major had undesignedly, he was sure, but palpably, misrepresented his argument; he had charged him with an intention to put Mr. Hastings betwixt two stools, by sending him from that Court to the House of Commons, where it was now certain he would obtain no redress.—Mr. Jackson appealed to the recollection of the Court, if he had not expressly said, that if the House of Commons should be so lost to decency and justice, as to refuse indemnification to a person who had been kept seven years upon his trial, at the suit of the Country, then would be the time for Mr. Hastings to come to that Court, and throw himself into the arms of his friends, and fairly state his sufferings and his situation. Did the Hon. Major fear that the Court would grow cool in a few weeks? Was it likely that the Priorities, who on that day had shewn so much sensibility and warmth of affection towards Mr. Hastings, who had not suffered a space of eight or ten years residence in this country to deaden a single impression of services performed even several

years before his return ; but on the contrary had shewn themselves as much alive to their merit, as if Mr. Hastings had landed but yesterday to give an account of them ; was it consistent, he desired to ask, to suppose that the same persons would say to Mr. Hastings when he came back to them unsuccessful from the House of Commons, " Oh ! no ! you should have taken us while we were warm—you should have insisted while we were in the humour ; that period is now passed, and we will have nothing to do with your indemnification." Sure he was, that no feature of the character of that Court justified such a supposition.

Mr. Jackson said, he could not bear without extreme concern Gentlemen who were or had been Members of the British Legislature speak of the answer of the Minister as the Resolution of the State. Much as he respected his talents and his virtues, he thanked God, that the Minister of the Country was not yet the Parliament of the Country, though such must be the Hon. Major's conclusion, when he said the doors of Parliament were shut. Such a declaration he thought did not become either the character of the Legislature, or the dignity of Mr. Hastings's claim upon it. The Hon. Gentleman must know, that though no Petition of a pecuniary nature could be laid upon the table of the House without a message from the Crown, yet it might be introduced, its merits might be opened and discussed so as to bring the subject before the Country without that form. If the Commons of Great Britain thought proper to subscribe their own shame, to place upon their records, and to chronicle to posterity, that a British subject had been seven years upon his trial, and acquitted without concession or reparation from the People, his accusers, then he was persuaded, that not only would Mr. Hastings experience the kindness and munificence of that Court, but every generous heart throughout the country would sympathize with him, lighten his sorrows, and even decorate and dignify misfortune, by bringing to it the tribute of universal affection.

He had been told, that certain Members of Parliament should say, that it was the affair of the Company, which had derived the profits from Mr. Hastings, to indemnify him. If Parliament would fairly say so, there was an end of

their difficulties ; all objections as to the want of concurrence on the part of the Directors, the danger of the precedent, or the illegality of the measure, would vanish before the will of Parliament ; but at present those objections remained in full force.

He must however declare, though he knew it would be offensive to many that heard him, that, in point of law and strict justice, Mr. Hastings had no claim upon the Company for his indemnification ; nor could he (Mr. J.) suffer that kind of doctrine to be held without asserting his opinion to the contrary. Mr. Hastings had every thing to hope for, from their personal regard for him, and from their known munificence, but he must object to an act of spontaneous munificence being treated as the mere discharge of a debt. Mr. Jackson said, he consented cheerfully to the Annuity, and admitted that to be a debt of gratitude, because he thought that all men who served the Public (and in serving the Company Mr. Hastings had served the Public) were entitled to liberal reward ; whether it might be so previously stipulated or not, the moral obligation was the same.—The man or body of men who could accept of public services without indicating a disposition to reward them, must possess minds of the most sordid and diminutive description. Men of high spirit, talents, and honour, were apt to confide ; they could seldom stoop to make a bargain for their zeal, or condescend to claim the consideration which it deserved. Persons in power knew well this temper, and daily practised upon it ; they found themselves served cheapest by modest merit ; they knew that the noble mind could never be importunate ; and they held it time enough to be liberal when importunity came, or when unblushing venality came boldly to the point, and convinced them it must be purchased.

Such was said to be the wretched policy of Courts, and to obtain among men who were callous to those just principles which form the sacred rules of private life. Such a policy, however, had not yet infected the East-India Company ; the history of that Court was but one unvaried tissue of generosity and justice towards those who had promoted their interests.

A Noble Marquis had recently experienced this fact, and he hoped Mr. Hastings was about to do the same.—

But

But between *compensation* and *indemnification*, he should ever contend there was a wide distinction. Mr. Hastings had served the Company; let the Company compensate him. The Country had outraged Mr. Hastings, not by accusing him, but by the protraction of his trial; let the Country indemnify him for his enormous expences. Upon the whole, Mr. Jackson said, convinced as he was that Mr. Hastings had no legal claim for his indemnification upon the Company, but that it ought to proceed from the Public; and thinking the Resolution now proposed most dangerous as to precedent, disrespectful to the Directors, unjust towards Government as interfering with its just demands upon them, and impolitic in itself as flying in the face of the House of Commons, he should conclude with once more earnestly pressing it upon the Court, to refer the whole matter to the consideration of the Court of Directors, who could examine every bearing of the question, who perhaps might be able to remove constitutional objections, to avoid legal difficulties, and whose wish and impulse he knew it would be, to convey to Mr. Hastings every comfort and assistance, consistent with the pecuniary circumstances of the Company.— If Gentlemen pressed the original question, they might indeed highly gratify their warm feelings, but he thought they ran some risk of failing in their main object, which he presumed to be, to render substantial service to Mr. Hastings.

The CHAIRMAN informed the Court, that the Opinion of Mr. Rous, the Company's Counsel, had been taken by the Directors, upon the legality of the proposition, which he would order to be read. It was read accordingly, and stated that Mr. Rous conceived the Motion was legal, under the words of the Act of Parliament, which were read as follows:

33. *Geo. III. Cap. 52. Sect. 113.* And be it further enacted, That during the continuance of the Exclusive Trade of the said Company, the *net proceeds* of their Sales of Goods at home, with the duties and allowances arising by private trade, and *all other profits* of the said Company in Great Britain, after providing for the payment of Bills of Exchange already accepted by the said Company, as the same shall become due, and for the current payment of other debts, interest, and other *outgoings*,

charges, and expences of the said Company, &c. &c.

At Mr. Jackson's request, the following Clause of the Act was read, which Mr. Jackson contended was illustrative of his argument, in opposition to the construction put on the Act of Parliament by Mr. Rous, the Company's Counsel.

33. *Geo. III. Cap. 52. Sect. 125.* And whereas for protecting the funds of the said Company, during their further term in the said Exclusive Trade, from being burthened with any *improper charges*, it is expedient that the said Company should be put under reasonable limitations, in respect to the *granting of Pensions, or increasing the Salaries of their Officers and Servants, or creating new Establishments*: Be it further enacted, that no Grant or Resolution of the said Company, or their Court of Directors, to be made after the passing of this Act, and during the continuance of their right in the said Exclusive Trade, whereby the said Funds may become chargeable with any *new Salary, or increase of Salary, or any new or additional establishment of Officers or Servants, or any new Pension, or increase of Pension*, to any one Person exceeding *two hundred pounds per annum*, shall be available in law, unless such Grant or Resolution shall be approved and confirmed by the Board of Commissioners for the Affairs of India, attested under the hand of the President of the said Board.

This 125th section, it was contended by several gentlemen, referred only to the grant of Pensions, increase of Salaries, or the creation of new Establishments, and consequently *no bearing* on the import of the Proposition for an indemnification of Mr. Hastings, which was to be considered as a mere *outgoing charge, and expence* of the Company.

Mr. Jackson's Amendment was then submitted to the vote of the Court, and negatived.

Mr. Alderman Lushington proposed to vote the second and third Resolution together.

A demurrer arose as to the looseness of the wording the latter part of the Resolution, and it was deemed necessary to limit the indemnification to a specific sum; it became therefore a Question, what sum should be specified.

Major Scott said, the accounts of Mr. Hastings's law charges were at this time under the audit of two Masters in

in Chancery, and that as nearly as could be ascertained, the amount was 71,080l. ; part of which was paid, and the rest remained as a debt due from Mr. Hastings.

Some conversation here took place upon the suggestion of a Proprietor, that it would be proper to appoint a Committee to inspect the account, and report the amount.

Lord Kinnaird thought it would be sufficiently safe in the hands of the Directors, and that no Committee was necessary.

Mr. Jackson said, that Mr. Hastings had had one consolation under his misfortunes, namely, that of falling into legal hands of the most honourable kind. The gentleman who, as Solicitor, had conducted his defence, was known not only to have arranged the astonishing mass of matter which he had to collect for the occasion, with wonderful accuracy, but to have conducted himself throughout with the utmost fairness. Mr. Jackson thought, however, that some sum should be stated, and suggested the filling up the Resolution with the sum mentioned by the Hon. Major, viz. not exceeding 71,080l.

This idea was immediately adopted, and the Chairman was about to put the Question, when

Mr. Serjeant Warson declared, he could not suffer the Question to go to the vote, without stating that he entertained very serious doubts as to the legality of the Resolution, and the right the Court had to pay the money under the authority of the Clause in the Act which had been read. The 11th Section of the Act that authorized the payment of *all outgoings, charges, &c.* could only be construed to mean *ordinary and customary charges*, and not an *item* of so *extraordinary* a nature as the charges in question. But at any rate, the possibility of error in a matter of so much importance, he thought was a sufficient reason for the Court's acting with great caution, and therefore he proposed to divide the Resolution, and vote the first part of it as an instruction to the Directors to inspect the accounts, and take the opinion of the first Law Authorities, as to the legal power of the Company to discharge the amount under the words of the Act of Parliament. The Learned Serjeant enforced this objection by argument, and said, if it should turn out

that the first Law Authorities entertained the same doubts on the matter that very seriously impressed his mind, the Proprietary might apply to Parliament for a Bill to sanction the measure; if, however, the Proprietors present did not approve of this proposition, he hoped at least that they would so far guard the Resolution, as to add the words, "if the same can be legally done."

Mr. Tolfrey said, that having been aware that an objection of this nature would be started, he begged leave just to state what had occurred to himself as an answer to it.—The power is contended for under the 11th Clause of the late Act of Parliament, which authorizes the payment of *all outgoing, charges, &c.* even antecedent to the dividend. But this, the learned Judge says, must be construed to be *ordinary* and *customary* charges, and not an *item* of this extraordinary nature. In his opinion there was nothing extraordinary in the nature of the charge, whatever there might be unusual in the amount of it; it was such an outgoing, as the Company had on many occasions discharged, and the quantum would make no difference in the argument; or if it did, it would be in favour of Mr. Hastings; for the more enormous these costs are, the heavier they fall on an individual to pay, attaching to his honourable acquittal all the pecuniary penalty, though not the stigma, of a condemnation.

Mr. Alderman Lushington thought the adding the words proposed by the learned Serjeant would only embarrass the Proprietors, when they came to ballot; as the Question so amended would throw a doubt on the face of it, that might trouble those who would otherwise be inclined to vote for it.

Mr. David Scott (the Deputy Chairman) concurred with Mr. Alderman Lushington, and said, they might be assured that the Directors would take care not to do anything that was illegal.

Mr. Owen said, he lamented, as every man who was not lost to humanity must lament, the late situation of Mr. Hastings: he was anxious that Mr. Hastings should by some means be reimbursed the expenses of his prosecution; but being somewhat accustomed to the consideration of legal Questions, and having heard an opinion read (Mr. Rous's) to which he

could not subscribe, he felt himself bound (however unpleasant the task) to deliver his sentiments. Mr. Owen clearly thought, that the latter part of the learned Counsel's opinion was erroneous, and that the intended measure for indemnifying Mr. Hastings, was directly contrary to the spirit and to the express letter of the Act of Parliament. The only power which the Company had to vote Mr. Hastings 70,000l. was under the words "outgoings, charges, and expences," mentioned in the 33d Geo. III. Cap. 52, Sect. 111. When different Acts of Parliament were founded *in pari materia*, it was usual and fair to expound one of them by another; and on the present occasion, Mr. Owen begged leave to call in aid the Act of the 13th Geo. III. Cap. 64. There a necessity for the most rigid œconomy was recognized, and from the 13th Sect. of that Act it was apparent, that by the words "outgoings, &c." the Legislature meant "necessary payments and deductions" only. Then what are necessary payments? If a man is prosecuted and acquitted, he cannot recover damages from the prosecutors, unless he proves that the prosecution was founded in malice, and that the same was instituted without probable cause. If a servant is prosecuted criminally for an act done even by the order and with the approbation of his master, yet the law will not allow that servant to recover from the master the costs which he has incurred in his defence. The master would certainly be bound in honour to indemnify his servant, though not in law. But admitting (for the sake of the argument) that there is no difference between the ordinary case of master and servant, and the relation that existed between the Company and Mr. Hastings at the time of his prosecution, and supposing that this, undoubtedly, was a debt of honour, could the Directors place such a debt of honour under the head of "outgoings, charges, and expences?" Mr. Owen contended that they could not.

Could the Company do it by way of gratuity for past services? To say that they could, would be a monstrous construction of the Act; for by Sect. 12, the Company was so restrained, that they could not grant to Mr. Hastings an annuity or pension of 200l. per annum, without the approbation and confirmation of the Board of Com-

missioners. If however the Company could vote to Mr. Hastings 70,000l. they might circuitously grant him a pension to an unlimited amount. If the Company could grant Mr. Hastings the gross sum of 70,000l. by which he might probably procure an annuity of 10,000l. they might in like manner create to him an annuity or pension to any extent. Mr. Owen repeated his anxious wish that Mr. Hastings should be reimbursed his expences of the prosecution, if possible; but declared himself decidedly of opinion, that the mode then under consideration was illegal.

Sir Francis Baring said, that the principle of the Resolution was by no means a novelty. They had various precedents on their books of indemnifications to their servants, the only difference was the extent of the amount; but if the principle was right in itself, the magnitude of the sum could not affect it.

Mr. Jackson recommended it to the Court to take the opinions of the Attorney and Solicitor General.

After farther slight conversation between Mr. Jackson, Mr. Chiswell, Mr. Henselman, Lord Kinnaird, and one or two other Proprietors, the Question was put on Serjeant Watson's Amendment, and the same was negatived.

The second and third Resolutions conjoined were then put to the vote, and carried with the Amendment, as follows:

Resolved, That the Charges made against WARREN HASTINGS, Esq. having been founded upon the public acts of his Government in Bengal, and he having been acquitted of all such Charges, it is highly reasonable that the said WARREN HASTINGS, Esq. should be indemnified for the Legal Expences incurred by him, in making his Defence.

Resolved, therefore, that this Court do recommend to the Court of Directors to apply to WARREN HASTINGS, Esq. for a statement of the said expences, and that after having established the same, by a full and satisfactory investigation, they do discharge the amount thereof, not exceeding 71,080l.

It was agreed, that although this Question had passed by a great majority of the Proprietors present, it ought to be referred to the decision of a Bal-

clor, and a Ballot was accordingly de-
manded by Mr. Alderman Lushington,
and eight other Proprietors. in due
form, and fixed by the Chairman, with
the approbation of the Court, for Tues-
day the 2d of June.

Mr. Alderman Lushington proposed
his last Resolution, having first amend-
ed it, by leaving out the words "from
the period of the return of Mr.
Hastings," and inserting "from the
1st of January 1795, to the expi-
ration of the Company's Charter for
an exclusive Trade," in order to
obviate Mr. Jackson's objections to its
being retrospective, and to meet whose
ideas, and profit by whose suggestions,
Mr. Lushington professed himself to be
at all times extremely anxious. It stood
therefore thus :

Resolved, That it is the opinion of
this Court, that, in consideration
of the long, faithful, and important
services of WARREN HASTINGS,
Esq. and to mark the grateful
sense entertained by this Com-
pany, of the extensive benefits
which they have received from
these services, a grant of an an-
nuity of 5000*l.* from the 1st of
January 1795, to issue from the ter-
ritorial revenue, during the term
of the Company's present exclusive
trade, to WARREN HASTINGS,
Esq. his heirs, executors, admini-
strators, and assigns, be prepared
by the Court of Directors, and
submitted to the Board of Com-
missioners for the affairs of India,
for their approval and confirma-
tion, pursuant to the Act of Par-
liament.

The Resolution was agreed to, and
a conversation arose, whether the Ques-
tion ought, like the preceding one, to
go to a Ballot; several gentlemen
thought that it stood on pretty nearly
the same grounds with the Resolution
for the indemnification, others main-
tained a contrary opinion.

Mr. Tolfrey said, "This Question ap-
pears to me, to stand on very dif-
ferent grounds from the last, and that
a Ballot upon it is by no means neces-
sary or proper. The former Resolu-
tion was to be definitively decided by the
Company. The present, after it has
passed this Court, and the Court of Di-
rectors, is to be sent to the Board of
Controul, for their approval and con-
firmation. In offering a remuneration
to Mr. Hastings, his feelings should be
PART VIII.

consulted; and as there has very pro-
perly been no distinction made, either
in the amount or the nature of the
pension now proposed, and that re-
cently granted to Marquis Cornwallis,
neither should there be any in the
manner of bestowing it. The pension
to the Noble Marquis, was decided on
in a General Court, and did not go to
a Ballot—a Ballot may be construed to
imply a doubt, and a difference of opi-
nion. I beg leave to submit it to the
Proprietors, that after the handsome
and unanimous testimony they have
given as to Mr. Hastings's merits, they
ought not to leave the Court without
coming to a decisive vote, as far as it
rests with them, on the Resolution for
his pension.

It being still contended, that the Re-
solution ought to be referred to the de-
cision of a Ballot, Mr. Alderman
Lushington, and the Gentlemen who
had stood forward as the most strenuous
supporters of the Motion, consented
that it should be so referred.

The Ballot on the Resolution to grant
the ANNUITY was fixed for Wed-
nesday, the 3d of June.

AT A GENERAL COURT,

Held at the India House, on the 2d of
June 1795, to determine by Ballot
the following question :

"That this Court do recommend,
"that the Court of Directors should
"apply to WARREN HASTINGS,
"Esq. for a statement of the legal
"expences incurred by him in
"making his defence; and that
"after having ascertained the
"same, by a full and satisfactory in-
"vestigation, they do discharge the
"amount thereof, not exceeding
"the sum of 71,080*l.*"

On casting up the Votes, the numbers
were,

For the Question,	554
Against it,	254

Majority for the Question, 300

AT A GENERAL COURT,

Held at the India House, on the 3d of
June 1795, to determine by Ballot
the following Question :

"That it is the opinion of this
"Court, that in consideration of the
"long, faithful, and important services
"of WARREN HASTINGS, Esq. and to
"mark the grateful sense entertained
"by this Company of the extensive be-
P p "nefits

" profits which they have received from those services, a grant of an Annuity of 5000*l.* from the 1st January 1793, to issue from the Territorial Revenues, during the term of the Company's present exclusive trade, to Warren Hastings, Esq. his Executors, Administrators and Assigns, be prepared by the Court of Directors, and submitted to the Board of Commissioners for

" the Affairs of India, for their approval and confirmation, pursuant to the Act of Parliament."

On casting up the Votes, the numbers were,

For the question	58
Against it	220
Majority	258 *

The

* On the same evening Mr. M. A. Taylor rose, in the House of Commons, and said, that seeing the Right Hon. Secretary Dundas in his place, he wished to ask him a question, and hoped he would have no objection to give an answer, assuring the House that he was not actuated in it by any motive of spite or malevolence.

The House knew that Mr. Hastings had been acquitted; he would not presume to say but he was innocent, or at least legally so. But a proposal had been made at the India House, that that Gentleman's expenses in the prosecution should be paid by the Company; and yesterday 71,000*l.* had been voted as Law Charges, but not subject to the Board of Control, while on the Annuity to be granted to him, a question remained, whether it was not subject to the will of that Board? He wished to know whether the Right Hon. Gentleman agreed to the proposition that the Board of Control had no power over the sum voted for Law Charges; and if none, whether it had over the Annuity? It was, he said, a serious public consideration, for they could look for responsibility nowhere, if not in the Board of Control; and if the Company had such a power independent of it, the sooner the House took it the better.

Mr. Secretary Dundas said, that though little entitled to speak on the authority of an Act of Parliament, he would give the best answer he could to the Hon. Gentleman's question. By the Act of the year 1793, there were two distinct appropriations; one, relative to the Revenues in India, the other to the S.^{ts} at home; and the terms of them were different. As to the Revenues collected in India, the first provision was for payment of Military Charges; the second for payment of Debts; the third, for the Charges of Government; the fourth, for providing an Investment; and by the fifth, after payment of the 500,000*l.* to Government, the Surplus was to be disposed of agreeably to the orders of the Directors. It was therefore, he conceived, out of the power of the Court of Directors to apply it on any account till the debts were entirely satisfied.

As to the appropriation of the sales at home, after the outgoings and the charges of the Company, there was provision for the interest of all debts - the payment of bills of India in way of transfer - 500,000*l.* to the public - and, lastly, the guarantee to accumulate to twelve millions for capital for the Company, as public property. He would say then, since it was mentioned, that he was clear the payment alluded to by the Hon. Gentleman could not fall in this. - The question therefore was, whether Mr. Hastings's Law Charges could be brought under the head of Outgoings? The Proprietors had no power, and the Directors should be cautious; for unless they could justify the proposition, they were personally liable.

ON Friday May 12, a most magnificent entertainment was given at Willis's Rooms, by the Bazaar Club to Mr. Hastings, in celebration of his acquittal. It partook more of the splendor of the East than any thing that ever was seen in this country. Upwards of five hundred persons were present, and Mrs. Hastings presided, to whom the company were respectively introduced. Lord Thurlow was one of this Assembly.

And on Tuesday, July 21, a Fête Champêtre was given by Sir JOHN and LADY D'OYLEY, at their cottage in Hampshire, to a very numerous and fashionable company.

The day was ushered in with the ringing of bells, and other demonstrations of joy. The company assembled at twelve o'clock in a large open Pavilion, surrounded with wood, except on want, which opened to a lovely lake, the banks of which were fringed with weeping willows, laburnums, roses, &c. The eight pillars which supported the roof of the Pavilion, were ornamented with wreaths of natural flowers, winding to the top. In the centre of the roof, in front, Mr. Hastings's arms, placed like a medallion in a wreath of flowers, made a very handsome appearance. Wreaths of flowers and laurels hung from the roof in

Light

The following Opinion of the Company's standing Counsel was laid before the General Courts at which the Resolutions whereon the above ballots were taken were proposed.

C A S E.

A special General Court of the Company, called at the request of nine Proprietors, is to be held to take into consideration the long, faithful and important services of Warren Hastings, Esq. late Governor-General of Bengal, with a notice, that it is intended to offer to the General Court, a proposition for a pecuniary compensation suitable to the importance of Mr. Hastings's services, and his present situation.

The Resolutions intended to be proposed at this Court have since been handed to the Court of Directors; a copy whereof you have herewith.

Your opinion is desired—Whether it is, or is not, competent to the Company to make the indemnity proposed, without the approval and confirmation of the Commissioners for the affairs for India?

O P I N I O N.

The pension of 5000 l. per annum is within the express words of the Act, and the grant of the Company cannot be available in law unless such grant shall be approved and confirmed by the Board of Control in the manner prescribed by the Act.

With respect to the proposed indemnity for the expenses incurred by Mr. Hastings under the impeachment, the power of the Company to discharge such expenses depends on the question, whether this payment may be classed under the general description of outgoings, charges, and expenses of the Company? In the ordinary case of protecting their Servants under prosecutions, no man could doubt it, especially when the event of a prosecution proves that their acts done in their service were really innocent, perhaps in the discharge of a necessary duty. With all due respect to the House of Commons, I can discover no ground for a legal distinction between their impeachment and the prosecution of the lowest member of the community, nor between an indictment, the defence to which may cost a very small sum, or an impeachment, which may involve the access to the most enormous expense; the principle of law must be the same, I therefore do think it competent for the Company to pay the expenses Mr. Hastings may have incurred in his defence.

GEORGE ROUS.

Temple, May 29th,
1795.

The Court of Directors afterwards received the following Opinions upon

light festoons: the inside of the Pavilion was hung with pictures applicable to the occasion; Mr. Hastings's occupied the centre, elegantly decorated with a wreath of white lilies and lilacs: on one side was that of Lord Thurlow; on the other, the late venerable Lord Mansfield: the remainder consisted of the arms of the East-India Company and the City of London; the print of the "Judgment of Britannia;" and the admirable caricature of "The Last Scene of the Managers' Face," by Sayer. A curtain of white silk, with gold fringe and tassels, hung in festoons above the pictures. On a small wooded island in the lake was placed a martial band, over whose heads waved a silk banner. Besides the Pavilion there were many tents erected on the lawn for the entertainment of the company.

An elegant breakfast, with fruits, ices, &c. was laid out in the Pavilion: in the centre of the table was a very beautiful temple, in which was a figure of Justice holding in her hand a pair of golden scales. In one scale were the Charges that had been exhibited against Mr. Hastings; in the other, on a small scroll of white silk, in letters of gold, the names of all those Noble Peers who so honourably acquitted him.

The Ladies and Gentlemen were presented with bouquets tied with white ribbons, on each side of which was the motto of "Virtue Triumphant," in letters of gold. These bouquets were presented by children dressed alike in white.

Dancing, music, and various other amusements, filled up the hours till dinner was served in the Pavilion.

After dinner the following toasts were drank:

"King and Constitution."

"Mr. and Mrs. Hastings; and may they live long to enjoy the triumph of their merits!"

"Lord Thurlow and Peerage of England, for their firm and constitutional support of the honour and justice of the Country."

"The East-India Company, for their uniform and liberal patronage of oppressed merit." These were followed by the usual public toasts.

the following Questions arising out of the preceding Resolutions, from the several Counsel whose names are subjoined to each Opinion.

C A S E.

First.—Whether it is competent to them to carry into execution this Resolution of the General Court, consistent with the several provisions and restrictions above recited, with or without the consent of the Commissioners for the Affairs of India?

Second.—Whether the Court of Directors are responsible themselves, supposing they direct the payment agreeable to the said Resolution of the General Court, without the consent of the Commissioners for the Affairs of India?

MR. SERJEANT-ADAIR'S OPINION.

This Case is by no means free from difficulty; the Legislature having so minutely directed the application of all the East-India Company's funds, revenues, and profits, both in Europe and India, and so strongly restricted them to the specific modes of application pointed out by the Statute of the 33d of the present King.

I know of no legal authorities, nor clearly established principles, which can serve as land marks to guide me to a certain and decisive opinion upon the question above stated, and I can, therefore, only state the result of the best consideration I have been able to give to the several provisions of the Act of Parliament referred to, as applicable to the situation of the Company, and the Resolutions of the General Court.

The whole of the Company's funds and revenues in India, seem to be so appropriated by the Act, as to leave no part of them applicable to the purpose stated in the Resolutions in question. And the "net proceeds of their sales of goods at home, with the duties and allowances arising by private trade, and other profits of the Company in Great Britain," after providing for certain payments mentioned in the first part of 11th Sec. are in like manner completely tied up from any such application of them. It appears therefore so far clear, that the object in question cannot be legally carried into effect, unless it can be fairly brought within some of those classes of payment which are allowed to be provided for, antecedent to the specific appropriations. The words "current payments of other debts, interest, and

"other outgoings, charges and expences" of the said Company," are in themselves large enough to extend to almost any disbursement; but, I think every sound principle of construction will restrain them to such "outgoings, charges, and expences," as were usual previous to the passing of the Act, and might properly be styled the "current expences of the Company." Amongst these, the proper and necessary *lata* charges of the Company seem to me to be clearly included. The true question, therefore, appears to be, how far the law charges of *defending those* who have been sued or prosecuted for acts done by the order, or directly in the service of the Company, may be considered as within the same principle.—I could wish it had been expressly stated, whether or not it has been usual for the Company, either previously to undertake the defence of persons so circumstanced, or subsequently to repay them the expences they have legally incurred by reason of such suits or prosecutions.

I rather conceive that both have been usual, and the only difference between those two cases seems to be, that in the latter case (as the party has conducted his own defence) it is open to the enquiry, how far it has been properly conducted, and the expences necessarily incurred. Supposing therefore (upon which I desire to be understood as giving no opinion of my own) "the charges made against Mr. Hastings, of which he has been acquitted, to have been founded upon the public acts of his government, under the authority, or directly in the employ and service of the Company," the inclination of my opinion is, that the Company are not restrained, by the fair construction of the Statute in question, from reimbursing him such charges as he has necessarily and legally incurred in conducting his defence.

If this can be legally done at all, I am of opinion it may be done without asking the consent of the Commissioners for the Affairs of India; because I think the payment cannot be made even with their consent, unless it comes fairly within the description of the "current outgoings, charges and expences" of the Company, for which no such consent is required.

If my opinion on this subject is mistaken, the regulations of the Act are so strict, and the public have such an interest in the ultimate surplus of the

Company's funds, as well as in some of the specific applications of them, that not only the Company collectively, but even the Directors personally, may be held to be responsible to the Crown, as trustees for the Public, for any misapplication of those funds.

19th June 1795.

J. ADAIR.

MR. MANSFIELD'S OPINION.

First.—Whether it is competent to them to carry into execution this Resolution of the General Court, consistent with the several provisions and restrictions above recited, with or without the consent of the Commissioners for the Affairs of India?

This question depends upon the 11th Section of the Act of Parliament which provides for the appropriation of the profits of the Company in Great Britain, by which, before that appropriation takes place, all the outgoings, charges, and expences of the Company are to be paid. Amongst the outgoings, charges, and expences of the Company, any indemnification which the Company think proper to give for expences which they suppose to have been incurred by their Servants in the discharge of their duty, or acting for the interest or benefit of the Company, or any reward which they think they ought to confer upon a meritorious Servant, are, I think, to be included. If this be a fair construction of those words, then I think that no distinction can be made between the proposed indemnification of Mr. Hastings, and that of any other Servant prosecuted for acts done by him in his station or employment in India. The largeness of the sum, and the prosecution against Mr. Hastings having been instituted and carried on by the House of Commons, may beget doubts upon this question; but still I think that the Company must have a power to indemnify him, if they have a power to indemnify any Servant against the consequences of a prosecution; and the Company alone must be the judges, whether they are called upon in justice or honour to give such an indemnification.

The construction which I give to the 11th Section is, I think, strongly supported by the provision in the 12th Section; for the latter supposes, that without the restriction which is thereby put upon the Company, they might, in their discretion, grant annual pensions, and if they might grant annual pensions, where they thought they were

merited, so they may give sums of money to persons who appear to them to be entitled to their bounty.

I am therefore of opinion, that it is competent for the Court of Directors to carry into execution the Resolution of the General Court without the consent of the Commissioners for the Affairs of India.

Indeed, if they could not do it without such consent, they could not do it without it; for if the Act of Parliament can be so construed as to restrain the Company from doing such an act, it restrains them absolutely, without any reference to the approbation or consent of those Commissioners.

Second.—Whether the Court of Directors are responsible themselves, supposing they direct the payment agreeable to the said Resolution of the General Court, without the consent of the Commissioners for the Affairs of India?

I am of opinion that the Court of Directors cannot be personally responsible for carrying into execution the Resolution of the General Court.

Temple, June 15, T. MANSFIELD.
1795.

MR. BLACKROFT'S OPINION.

First.—Whether it is competent to them to carry into execution this Resolution of the General Court, consistent with the several provisions and restrictions above recited, with or without the consent of the Commissioners for the Affairs of India?

I am of opinion, that the Directors are not legally authorised to carry into execution this Resolution of the General Court, and that they cannot do so consistently with the provisions and restrictions of the Statute. For it seems to me, that this grant, both with regard to the occasion and the largeness of the sum, cannot with propriety be considered as falling under the general words of the Act of Parliament, "other outgoings, charges, and payments of the Company," which words, as I conceive, only mean the current, usual, and reasonable expences of carrying on the business of the Company.

Second.—Whether the Court of Directors are responsible themselves, supposing they direct the payment agreeable to the said Resolution of the General Court, without the consent of the Commissioners for the Affairs of India?

It is more than I can venture to say, that the Directors will not be responsible.

sible themselves if they direct the payment proposed.

It is true, an action at law, or a suit in equity, could hardly be framed or maintained against them in such a case; but it is by no means clear, that they might not be liable to a criminal prosecution by way of indictment or information, inasmuch as the Public at large may be ultimately interested in the application of the profits of the Company; not to say any thing of a possible notice by Parliament of a transaaction of this nature.

EDWARD BEACROFT.

Lincoln's-Inn, 16th June,
1795.

MR. ERSKINE'S OPINION.

I Have considered the different Acts of Parliament with sovery strong a wish that the law might be found to vindicate a measure which appears to me to be sanctioned by every principle of public policy and private justice, that perhaps I may have overlooked difficulties which have occurred to others, or which may really belong to the subject.

The Acts of Parliament, taken together, present to my mind but one sensible or legal construction.

The public force of the Nation having at different times been employed in extending the possessions, revenues and commerce of the Company, exclusively granted to it by charter, claims of Government were upon several occasions advanced, which ended in compacts of participation confirmed by the authority of the Acts of Parliament in question. These Acts mark out in what proportions, and subject to what qualifications, this participation of the Public in the Company's property is to attach.

With regard to the Territorial Revenues, they are devoted in the first place, before any participation of the Public, to the defraying the Company's Military and Marine Establishments in India:—Second, To the Interest of their debts incurred in India: and—Third, which is material to the present enquiry, to the defraying of the expences of their Civil and Commercial Establishments at their several Settlements.

No rational construction can be put upon these members of the Statute, ex-

cept, that the Territorial Revenues before any title to public participation accrues to Government, are to be appropriated to all expenditures *bona fide* incurred by the Company in support of the Military and Civil Governments of the East.

I am aware that the Board of Control has a superintendence of the exercise of these authorities, and that it would not be a legal expenditure to create establishments not sanctioned by that body, nor to carry into effect measures which it had interdicted; but subject to that controul in the exercise of their governments, the revenues are in the first place expressly pledged, or rather appropriated by Parliament to the expences of their support.

Now it seems to me impossible to confine this expenditure to the mere fixed or calculable expences of establishments; for if this were so, the Company could neither reward nor protect, nor indemnify their Servants, nor provide for the innumerable contingencies of the most extensive and important governments. Nothing but the magnitude and singularity of the occasion can occasion the doubt; for it must be remembered, that if the construction of the Act were to be narrowed to fixed establishments capable of previous calculation, the Company would have as little right to indemnify a Civil or Military Servant who had lost his baggage in a river in the course of service, as Mr. Hastings for the expence of his impeachment.

But the Act itself in another part of it shews that the narrow construction is not the true one; because it limits the power of granting pensions to 200 l. which is a recognition that the power of rewarding merit from the funds of the Company was before that time a legal appropriation of them to any extent.

Indeed, if the public participation is only to commence after defraying the expences of the East-Indian Governments, no rational construction can be put upon such a compact, but that every expence *bona fide* incurred by the Company in the just and politic exercise of their authority in India, is to constitute the first appropriation of their revenues, which brings the question to this, viz. Whether the proposed indemnification of Mr. Hastings is a fair and *bona fide* expence arising from their character and situation as Governors of India?

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Every man acquainted with human life must admit that it is impossible to carry on the most insignificant business, much less the mighty trust of distant and extensive empire, without the means of giving security and indemnity to those who are engaged in the performance of complicated and perilous duties.—The acts for which Mr. Hastings was impeached were the public acts of the Company's Government, and now appear by the acquitting judgment to have been acts vindicated by his obligation of service to his masters; it appears therefore to me, that if Mr. Hastings must necessarily be charged with the loss of £.70,000 for the expenses of his trial, without any power in the East-India Company to tax their revenues with his indemnification, as an expense incident to their Establishments in India, the very existence of their Governments is endangered, because no Government can be administered with vigour and firmness, and consequently not with safety, unless its Ministers and Officers, whilst they are honest, are indemnified and protected in the exercise of their stations.

When I find, therefore, the participation of the Public in the Company's revenues postponed until the expenses of the Settlements abroad are defrayed and provided for, I cannot but consider them as legally devoted to every bona fide expense which wise policy or private justice may call upon men who are Governors of distant provinces to incur. And I am most clearly of opinion, that the indemnification of Mr. Hastings falls within both these principles.

The construction which I have ventured to put upon the Statute, as it regards the Territorial Revenues, is amply confirmed by the Sec. 111. relative to the Company's profits in Great Britain, where the participation of the Public is postponed till every outgoing, charge, and expense is provided for. These words, which are of the largest and amplest signification, would be sufficient to carry the decision of this question, looking only to the funds which that Section had in view, and standing singly upon it; but I am of opinion, that this 111th Sec. does much more than substantively support the act of the Directors as far as it relates to that fund; it reflects a strong light upon the anterior members of the Statute, which the whole history of the regulations concerning India must confirm to every

man who is acquainted with them. With regard to responsibility, supposing the appropriation not to be justified by the Act, the Company would undoubtedly be obliged to refund to the Public, represented by the Attorney General in an information filed for that purpose; but I have not materials before me for judging whether the responsibility would extend to the whole Company, or be confined personally to the Directors.

Serjeant's-Inn, June. T. ERSKINE.

MR GIBBS'S OPINION.

I Am of opinion, that it is competent to the Directors to carry into execution the Resolution of the General Court without the consent of the Commissioners for the Affairs in India. The indemnifying an Officer of the Company against the expenses of a prosecution founded on acts done by him in the execution of his office may, I think, fairly be reckoned among those outgoings, charges, and expenses which the Company are directed by the 111th Sec. of the Statute to provide for. It is highly reasonable that they should possess a power of so doing, for in many cases the expense of it must be essential to the carrying on of their service; the words of the Statute are, in my opinion, large enough to give it to them, and the Legislature must, I think, have supposed that the Statute had given it, for by the 125th Sec. the Company are restrained from granting or increasing any salary or pension beyond £.200 per ann. without the consent of the Commissioners; which shews that the Legislature thought they would have been empowered with this restraint to reward their Servants by pensions and salaries to any amount; and if they might reward, it seems to follow, that they might indemnify them against losses and expenses arising in the course of their service. It is observable too, that the Company has still under the 125th Sec. a power of rewarding by pension or salary, to any amount, with the consent of the Commissioners; but, if they have not a power of indemnifying under the words above referred to in the 111th Section, they have it not at all, not even with the consent of the Commissioners, and in no case can the loss or expenses of a Company's Servant be legally discharged out of the funds of the Company. I am of opinion that this was the meaning of the framers

framed the Statute; the words of the 11th Section seem to me capable of a construction more conformable to the intent of the Legislature; as I collect it from the 12th Section, and therefore I think that they ought to receive this construction.

Neither the mode of prosecution against Mr. Hastings, nor the amount of his expences, can in my opinion affect the question upon the Company's right to indemnify him. In what cases and to what extent they shall exercise this right must be left to their discretion; which cannot, as I think, be questioned, unless they act corruptly.

Second.—It follows from my answer to the first question, that I think the Directors will not be responsible for directing a payment agreeable to the Resolution of the General Court. If such payment were prohibited by the Statute, I should incline to think that the Directors would be personally responsible for making it; but I am not sufficiently acquainted with the constitution of the East-India Company, and the powers vested in the Directors, to speak positively on this subject.

Temple, June 14th, 1795.

V. GIBBS.

MR. ROUS'S OPINION.

The first question proposed is nearly the same on which I have already given an opinion. After revolving the subject in my mind with anxious attention, I retain my former sentiments.

The funds of the East-India Company are appropriated by compact with the State, confirmed by Act of Parliament, and this Act must doubtless obtain a liberal construction to effectuate the intention of the parties. The question is, whether under such a construction, "The payment of the expences of a Governor General, defending himself against a criminal charge of which he is not guilty," can be comprised under the general description of outgoings and expences of the Company, which by the terms of the Act are to be discharged before any appropriation takes place.

The first view of the subject which occurs is, Can these words receive the confined and limited construction of rights or duties which a Court of Law will enforce? This, it appears to me, would be an incorrect construction of outgoings and expences, as predicated of an individual; for it is to include all

duties, which moral writers distinguish as duties of imperfect obligation, duties obligatory on the conscience, the performance of which cannot be compelled. These terms, like all general terms, must be expounded, with reference to the subject matter to which they are applied. In the great and complicated concerns of the East-India Company, political and commercial, I cannot conceive their just expences so limited as to exclude the protection of their Servants, whom the event of a trial has proved to be innocent. How can it be expected that the Servants of the East-India Company, in the arduous duties to which they are called, shall forget their own personal hazards, if the Company have not the means of affording protection to innocence, and even to error? I doubt the possibility of managing these important interests without an expenditure directed to such objects. I am the more inclined to think mine the sound construction of the Act, because Clause Section 125 provides that no grant of a pension, exceeding a limited sum made by the Company, shall be valid in Law, without the consent of the Board of Commissioners for the Affairs of India; by which provision the Legislature seems to assume, that outgoings and expences would, without such a restriction, comprehend indefinite rewards to the Servants of the Company; and by necessary implication affirm, that these grants even of pension within the prescribed limit, will be legal, under the general description of expences of the Company.

The character of the accusers of Mr. Hastings, and the magnitude of the sum, appear to me to have created the doubt. With all due respect to the House of Commons, I cannot distinguish between their impeachment and an indictment by the lowest member of the community, or between a prosecution which costs the party a small sum, and one which involves him in the most enormous expence. These circumstances may have their influence in the exercise of the discretionary trust, but afford no principle of legal distinction. The power must extend to both cases or to neither.

I have assumed, as one of the terms of the proposition, the innocence of the party accused; and have thought it respect due to the decision of the House of Lords warranted me in so doing. Not that I think this fact essential, because

X. QUESTION.—Whether it be competent to the Managers for the Commons to examine the witness to any account of the debate which was had on the 9th day of July 1778, previous to the written minutes that appear upon the consultation of that date?

1794, Feb. 25. Lords Minutes.

ANSWER.—The Lord Chief Justice of the Court of Common Pleas delivered the unanimous opinion of the judges upon the said question—"That it is not competent to the Managers for the Commons to examine the witness, Philip Francis, Esq. to any account of the debate which was had on the 9th day of July 1778, previous to the written minutes that appear upon the consultation of that date"—and gave his reasons.

1794, Feb. 27. Lords Minutes.

XI. QUESTION.—Whether it is competent for the Managers for the Commons, in reply, to ask the witness, whether, between the time of the original demand being made upon Cheit Sing, and the period of the witness's leaving Bengal, it was at any time in his power to have reversed or put a stop to the demand upon Cheit Sing—the same not being relative to any matter originally given in evidence by the defendant?

1794, Feb. 27. Lords Minutes.

ANSWER.—The Lord Chief Justice of the Court of Common Pleas delivered the

unanimous opinion of the Judges upon the said question—"That it is not competent for the Managers for the Commons to ask the witness, whether, between the time of the original demand being made upon Cheit Sing and the period of his leaving Bengal, it was at any time in his power to have reversed or put a stop to the demand upon Cheit Sing, the same not being relative to any matter originally given in evidence by the defendant"—and gave his reasons.

1794, Mar. 1. Lords Minutes.

XII. QUESTION.—Whether a paper read in the Court of Directors, on the 4th of November 1783, and then referred by them to the consideration of the Committee of the whole Court; and again read in the Court of Directors on the 19th of November 1783, and amended, and ordered by them to be published for the information of the Proprietors, can be received in evidence, in reply, to rebut the evidence given by the defendant, of the thanks of the Court of Directors, signified to him on the 28th of June 1785,

1794, Mar. 1. Lords Minutes.

ANSWER.—Whereupon the Lord Chief Justice of the Court of Common Pleas, having conferred with the rest of the Judges present, delivered their unanimous opinion, upon the said question, in the negative—and gave his reasons.

1794, Mar. 1. Lords Minutes.

THE END.

